

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRP.(PD)No. 593 of 2017

and

C.M.P.No.3084 of 2017

Murugan

...Petitioner

Vs

S.Mani @ Thavamani

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to allow the Civil Revision Petition and set aside the order in I.A.No.202 of 2016 in O.S.No.22 of 2011 on the file of the learned District Munsif, Arakkonam.

For Petitioner : Mr.N.Subburayalu

For Respondent : Mr.S.Gowrishankar

ORDER

The prayer sought for in the present revision is to set aside the order made in I.A.No.202 of 2016 in O.S.No.22 of 2011 on the file of the learned District Munsif, Arakkonam.

2. Aggrieved against the order of rejection of the petitioner's application seeking to file additional written statement, the present revision has been filed.

3. It is the case of the petitioner that earlier the suit was filed for bare injunction and that by a subsequent order dated 09.07.2012, the plaintiff was permitted to amend the prayer by introducing the declaration and mandatory injunction reliefs. Pursuant to the amendment, the petitioner/defendant in the suit has sought for permission for filing an additional written statement through a petition dated 13.04.2016 filed under Order 8 Rule 9 of the Code of Civil Procedure. The trial Court by observing that the petitioner had taken inconsistent pleas in the original written statement and the additional written statement, had rejected the petitioner's application requesting to file an additional written statement.

4. It is the case of the petitioner herein that the present plea in the additional written statement was only after the amendment had been allowed. The learned counsel also submitted that though the trial has commenced, there is no bar in filing the additional written statement.

5. The learned counsel for the respondent on the other hand submitted that the pleas raised in the additional written statement as well as the original written statement are contradictory to each other and therefore there is no infirmity in the order of the trial Court in rejecting the petitioner's application. The learned counsel for the respondent also submitted that the petitioner herein has come forward with the present application in order to fill up the lacuna in the earlier written statement.

6. I have given my careful consideration to the submissions made by the respective counsels. It is not in dispute that the present application has been filed only after the trial Court had amended the prayer from injunction to the relief of declaration and mandatory injunction. When the amendment has been permitted giving rights to a new relief of declaration and mandatory injunction, it would be appropriate to permit the defendant to file an additional written statement, since the earlier cause of action has completely changed in view of the amendment. The trial Court had already observed that the trial has already commenced and was in the verge of closing. Though, the amendment was allowed in the year 2012, the application has been belatedly made in the year 2016. Nevertheless, in order to afford an opportunity to the defendant to suitably put forth his defence to the amended plaint, it would be appropriate to give him an opportunity and this Court is

unable to see as to the prejudice that could be caused to the plaintiff by permitting the defendant/petitioner to file his additional written statement. As such, in the light of the above observations, the order of the trial Court dated 07.02.2016 passed in I.A.No.202 of 2016 in O.S.No.22 of 2011 is set aside. Consequently, the petitioner herein/defendant is permitted to file his additional written statement before the Court below. Since, the suit is pending from 2011 onwards and that the petitioner is now being permitted to file his additional written statement, it would be appropriate to direct the trial Court to dispose of the suit as expeditiously as possible.

7. With the above observations, Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.10.2018

Index: Yes/No
Internet: Yes/No
dh/vsn

To

The learned District Munsif,
Arakkonam.

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M.S.RAMESH. J.,

dh/vsn



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