

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CRP.(PD).No.3258 of 2018

and

C.M.P.No.18502 of 2018

1.A.Manohar Prasad

2.A.Indira Anand

3.Sai Siva Jyothi

4.A.Lakshmi Ananthi

5.Miss A.Anjali Krishnamani (Minor)
rep. by her mother and natural guardian
Sai Siva Jyothi

.. Petitioners

V.

M/s.Prasad Production Pvt. Ltd.,
Rep. by its Managing Director
A.Ramesh Prasad,
No.28, Arunachalam Road,
Saligramam,
Chennai-600 093.

.. Respondent

WEB COPY

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 05.10.2018 in I.A.No.11903 of 2018 in O.S.No.13825 of 2010 passed by the learned VI Additional City Civil Judge, Chennai.

For Petitioners : Mr.Vineet Subramani
For Respondent : Mr.S.Raghunathan

ORDER

The petitioners herein are the defendants 2 to 6 in a suit for delivery of possession of an immovable property and mense profits. The present revision is against the rejection of the petitioners' application in I.A.No.11903 of 2018 filed under Order 8 Rule 9 of the Civil Procedure Code to permit the second defendant to file an additional written statement in the suit.

2.Heard Mr.Vineet Subramani, learned counsel for the petitioners as well as Mr.S.Raghunathan, learned counsel for the respondent.

3.Mr.Vineet Subramani, learned counsel for the petitioners submitted that the petitioners 2 to 5 herein are the legal representatives of the first defendant. Earlier, the defendants 1 and 2 had filed written statement on 11.09.2007. When the suit was originally presented before the High Court in C.S.No.248 of 2004, the same came to be transferred in 2010 to the City Civil Court, Chennai and re-numbered as O.S.No.13825 of 2010. Subsequently, when the original defendants were set ex-parte and the suit was

decreed on 31.10.2011, the defendants had filed an application to set aside the ex-parte order and when the same was dismissed as not maintainable, the High Court, by an order in CRP.587 of 2017, had allowed the revision with a direction to the trial Court to take the application to set aside the ex-parte order and decide the same on merits. The challenge to the order passed in the CRP No.587 of 2017 before the Hon'ble Supreme Court also came to be dismissed on 20.03.2017. Thereafter, the legal representatives of the first defendant came to be impleaded on 01.08.2017. It is the submission of the learned counsel for the petitioners that meanwhile, the respondent herein had raised a technical objection stating that the orders of the High Court as well as the Hon'ble Supreme Court was only as against the order passed in the pre-numbering stage of the application to set aside the ex-parte decree and therefore, the issue as to whether the ex-parte decree to be set aside is to be agitated separately. The City Civil Court had accepted such a plea and the original orders setting aside the ex-parte decree came to be set aside. Thereafter, the said applications were taken up again and after arguments, the same came to be allowed on 24.08.2018. It is in this background that the petitioners had filed an application in I.A.No.11903 of 2018 on 17.09.2018 under Order 8 Rule 9 of the Civil Procedure Code seeking permission for filing of an additional written statement. According to the learned counsel

for the petitioners, the plaintiff's company had failed to show that Mr.A.Ramesh Prasad was authorized by them at the time of filing of the suit in the year 2004 and since the records available on the website of the Ministry of Corporate Affairs reveals that Mr.A.Ramesh Prasad was appointed as Director only on 11.02.1999, the averments in the plaint that he was the Managing Director of the plaintiff's company in the year 1994 was false. As such, in order to incorporate this aspect, filing of an additional written statement in order to place the extract from the website of the Ministry of Corporate Affairs along with the necessary certificate under Section 65(B) of the Indian Evidence Act, 1872 was imperative and therefore, the application seeking leave of the Court to file an additional written statement came to be filed. The learned counsel submits that the trial Court had erroneously rejected the application on the ground that the application under Order 8 Rule 9 of the Civil Procedure Code came to be filed at a belated stage. According to him, such an additional written statement can be filed at any point of time during the course of the proceedings with the leave of the Court. The learned counsel also further tried to impress this Court that the plaintiff was not a Managing Director of the plaintiff's Company in the year 1994 contrary to the averments in the plaint and submitted that the delay was not wholly due to the petitioners herein but in view of various other incidental

proceedings. It is the submission that even in the original written statement filed, the defendants 1 and 2 had denied the allegations that Mr.A.Ramesh Prasad was the Director of the plaintiff's company in the year 1994.

4.The learned counsel for the respondent on the other hand submitted that the application seeking for filing of an additional written statement is misconceived and has been made for the purpose of protracting the proceedings. According to the learned counsel, the original written statement was filed as early as in the month of December 2007 and that the trial commenced in the month of April 2008. The evidence of P.W.1 and D.W.1 were also completed and that the trial is at the stage of cross examination of D.W.2. By drawing the attention of this Court to the affidavit filed in support of the application under Order 8 Rule 9 of the Civil Procedure Code, the learned counsel submitted that there is no reason adduced by the petitioners herein, seeking permission of the trial Court for filing of an additional written statement at such a belated stage and as such, there is no infirmity in the orders passed by the trial Court rejecting the petitioners' application. In support of his contention, the learned counsel relied upon the judgments of this Court in **2000 (1) LW 420 [H.Ramachandra Rao V. A.Mohideen]** and **2005 (4) LW 482 [Chandra, Chinnadurai**

and Poongavanam V. Ranganathan]

5.I have given careful considerations to the submission made by the respective counsels.

6.The main ground on which the application under Order 8 Rule 9 of the Civil Procedure Code came to be rejected is that the permission was sought after a very belated stage.

7.Order 8 Rule 9 of the Code of Civil Procedure reads as follows:-

"Subsequent pleadings- *No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."*

8.From the reading of the aforesaid provision, it is seen that after the written statement of the defendant has been filed, no further pleadings shall be presented before the Court and any such

additional pleading is sought to be presented, the same can be permitted only by leave of the Court. The scope of Rule 9 is very limited to the effect that there shall be no pleading after written statement has been filed, if at all, any further pleading sought to be brought in, the leave of the Court has to be obtained. When such an application is made under Order 8 Rule 9 of the Civil Procedure Code seeking for permission to file an additional written statement, the issue before the trial Court is to consider as to whether the permission can be granted or not would be on the basis of the reasons adduced in the application for not setting forth the additional pleas in the original additional written statement at the earliest point of time or any other reasoning for not having brought forth these facts in the original written statement.

9. An additional aspect that may require consideration by the trial Court, when an application is filed under Order 8 Rule 9 of the Civil Procedure Code when the trial had already commenced and the plaintiff's evidences has been completed, the evidence already let in by the plaintiff, in the absence of any plea not set forth in the original written statement, may render such evidence futile. One of the basic principle of the law of pleadings is that, before the parties go for trial, the required proof should be fully set forth in the respective cases through their pleadings to enable the trial to take a

logical course, based on the pleadings already let in. By bringing in a new or additional or inconsistent pleas in the additional written statement, the plaintiff may be put to serious prejudice and hardships.

10.No doubt, that in a catena of judgments, it has been held that an application seeking permission to file such an additional written statement can be permitted with the Court's leave at any stage. However, such a discretion of granting leave to file additional written statement could be exercised by the trial Court only after satisfying itself that the defendant had a reasonable cause for not having raised this plea at an earlier point of time and for any other reasons for the delay in receiving such pleas at the belated stage and while considering such reasonings, the trial Court would also be required to consider the conduct of the parties and ascertain as to whether the defendant is indulging in any act of protracting the proceedings or otherwise causing any hardships to the plaintiff. To put it in other words, what would be required for granting such a leave to file additional written statement under Order 8 Rule 9 is that the reasons adduced therein should be sufficient enough to touch the conscience of the trial Court to exercise such discretion. It goes without saying that such an application without proper reasoning or without any reasonings at all, requires no consideration

and the trial Court will not be justified in exercising its discretion in the absence of any reasoning, since Order 8 Rule 9 bars additional pleadings, after filing of the written statement.

11. In the light of the aforesaid observations, the facts of the present case were perused. The suit came to be originally filed before the High Court in the month of March 2004. Thereafter, the original defendants 1 and 2 had filed their written statement in December 2007. The trial commenced in April 2008 and after completion of evidence of P.W.1 and D.W.1, D.W.2 had filed his proof affidavit. When the case was at the stage of cross examination of DW2, the suit came to be transferred to the City Civil Court. The defendants were set ex-parte and the suit was decreed on 31.10.2011. After various incidental proceedings, the ex-parte decree was set aside on 23.01.2018 and the petitioners 2 to 5 herein were impleaded as defendants. On a perusal of the adjudication orders as evidenced in the E-Status report, it is seen that on 13.06.2018 and 22.06.2018, the trial Court had granted time to the petitioners herein to file their additional written statement and since no additional written statement was filed, the case came to be posted for further evidence on 26.06.2018. Thereafter, the case came to be adjourned to 27.06.2018 and 28.06.2018 for further evidence. It is after this, that the petitioners

had come out with an application under Order 8 Rule 9 of C.P.C., on 17.09.2018. While considering these stages, I do not think the Court below had committed any error in observing that the application filed by the petitioners herein was at a belated stage. As a matter of fact, the petitioners have also been given due opportunity to take steps to file their written statement. Hence, there is no infirmity in the order as such.

12. It would also be pertinent to look into the reason for which the petitioners intend to file an additional written statement. According to them, they were in possession of certain material from the Internet allegedly evidencing that A.Ramesh Prasad was not the Director of the plaintiff's company in the year 1994. Such a specific plea was not pleaded in the original written statement except for vague denials in this context. While perusing the affidavit filed in support of the application filed under Order 8 Rule 9, there is absolutely no explanation as to why such a plea is sought to be raised through an additional written statement at a belated stage. Neither is there any explanation as to the reason for not having filed such an application at an earlier stage. The gist of the application reads that the plaint was filed by A.Ramesh without any authorisation and that the averment in the plaint reveals that Mr.A.Ramesh was the Managing Director of the plaintiff's company in

1994 was false. Apart from this, the affidavit does not justify in any manner the reasons for not having raised such a plea or filed such an application at an earlier stage. I have set forth the legal position as to the necessity for adducing the reasonings seeking for filing of additional written statement at a belated stage and in the absence of any reasons, the trial Court will not be obliged or justified in exercising its discretion of granting leave to accept such a plea through an additional written statement under Order 8 Rule 9 of the Civil Procedure Code.

13. The judgments relied upon by the learned counsel for the respondent reported in **2000 (1) L.W. 420 [H. Ramachandra Rao V. A. Mohideen]** has been subsequently relied upon in the other judgment cited by the learned counsel for the petitioner in **2005 (4) L.W. 482 [Chandra, Chinnadurai and Poongavanam V. Ranganathan]**. The relevant portion of the judgment is also extracted as follows:

WEB COPY

"11. The application under Order VIII Rule 9 C.P.C., had been filed belatedly. As stated earlier, on behalf of the plaintiffs, five witnesses had been examined and cross examined. At that stage, nearly seven years after the filing of the written statement, the second defendant had filed

I.A.No.533 of 2000 under Order VIII, Rule 9 C.P.C., to receive additional written statement. When the evidence on the side of the plaintiff's had nearly completed, the second defendant was not justified in filing the application to receive the additional written statement. If the additional written statement is entertained at this stage, the plaintiffs would be deprived of the opportunity in meeting the facts and pleadings put forth in the additional written statement.

12.The object of the law of pleadings is that the Court and the respective parties, should fully know of the case before the parties go in for trial, so that, the trial may proceed in that well defined channel. Now, by putting forth new set of facts, after the plaintiff's evidence is closed, the defendants are only attempting to divert the process of trial. If the application is allowed, there would be no remedy to the plaintiff to adduce proper evidence, thereby, meeting the defence plea set forth.

13.In a similar case, where evidence of plaintiffs was over, where the application was filed under Order VIII, Rule 9 C.P.C., to receive additional written statement, that application was dismissed by the lower Court which was confirmed by this Court in the decision reported in 2000 (1) LW 420 (H.Ramachandra Rao Vs.

A.Mohideen) holding that when the entire evidence of plaintiff was over, fresh pleadings under Order VIII, Rule 9 C.P.C., cannot be allowed. Justice S.S.Subramani has held thus:-

"In this case, entire evidence of plaintiff is over. If fresh pleadings are allowed to take place, plaintiff will be put to hardship and entire case will have to be reopened. First written statement was filed in the year 1992 and it was seven years after leave is sought for to file written statement. Why petitioner waited for these seven years for filing the application is nowhere stated in the affidavit. Petitioner cannot contend or insist that Court must receive additional pleadings as of right. Permission has to be obtained under Order 8, Rule 9 of Code of Civil Procedure. Under what circumstances leave is to be granted and how the discretion is to be exercised depend on the facts and circumstances of each case. In all such cases, party who seeks leave has to explain as to why this contention was not raised in the earlier pleadings. While exercising discretion, the Court will consider the conduct of the party, stage of the litigation, delay that has occasioned, how far the opposite party will be put to hardship etc."

The above observation squarely applies to the case in hand where the defendant has filed the additional written statement nearly seven years after the filing of the earlier written statement.

14. The stage when the plaintiffs evidence has been closed, the second defendant is not justified in filing the application to receive additional written statement. The reason stated in the affidavit that the Agreement of Sale was not traceable earlier is not convincing. The lower Court has not taken note of the stage of the litigation and the delay that has occasioned and the hardship to which the plaintiffs would be subjected. The impugned order suffers from material irregularity and is to be set aside."

The above order is self explanatory and in support of the findings rendered by this Court in the present order.

14. For the aforesaid reasons and findings, it can only be held that an application filed under Order 8 Rule 9 of the Civil Procedure Code, without adducing any reason for justifying the delay in raising pleas through an additional written statement or filing an application at a belated stage, does not deserve any consideration for exercise of the discretion of the trial Court in granting leave.

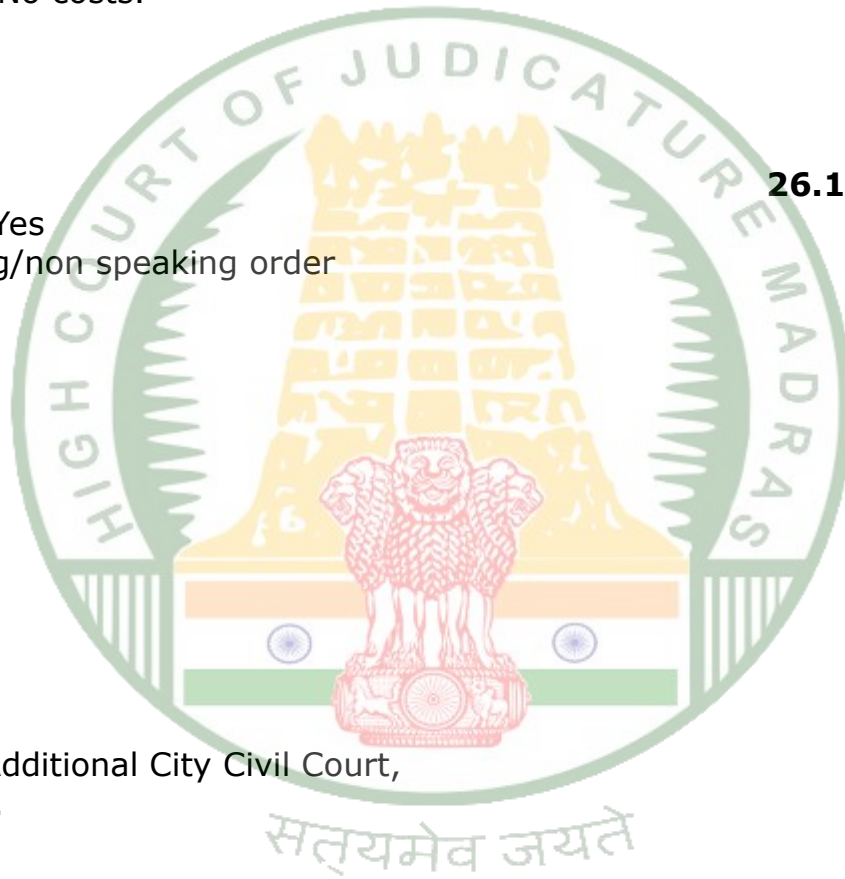
15. In view of the foregoing reasons, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Index : Yes
Speaking/non speaking order
DP

26.10.2018

To

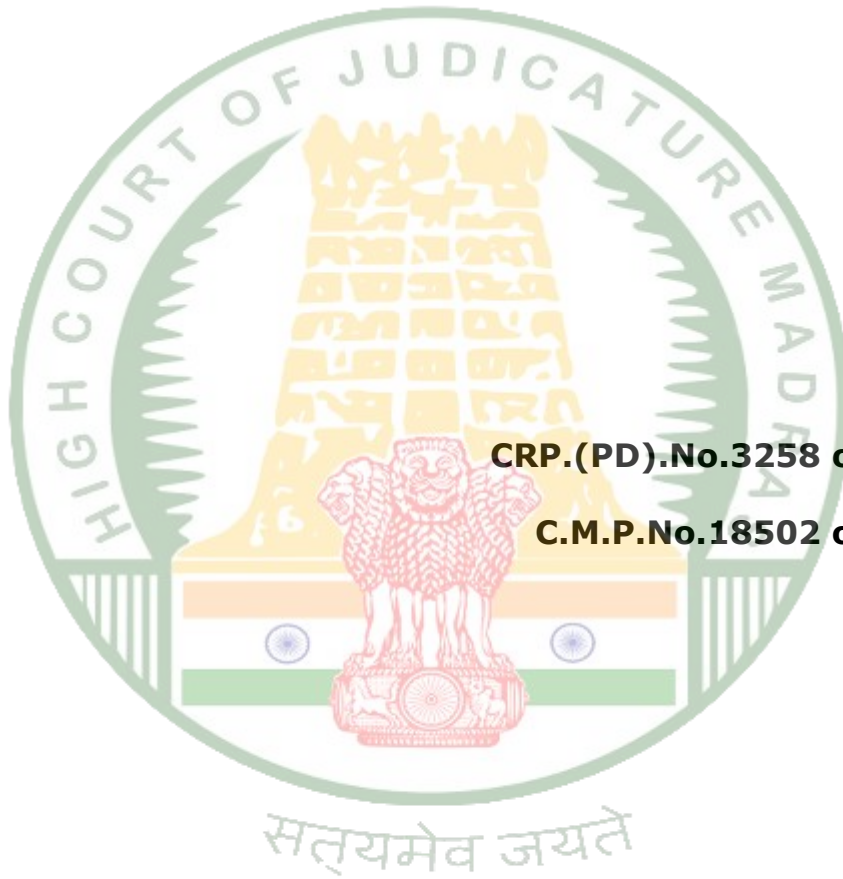
The VI Additional City Civil Court,
Chennai.



WEB COPY

M.S.RAMESH, J.

DP



**CRP.(PD).No.3258 of 2018
and
C.M.P.No.18502 of 2018**

WEB COPY

26.10.2018