



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) Nos.148 and 149 of 2018

and

CMP (MD) No.650 of 2018

G.Selvam

.. Petitioner in both the CRPs

vs

C.Saraswathi

.. Respondent in both the CRPs

Common Prayer: Revisions filed under Article 227 of Constitution of India, against the order dated 06.12.2017 passed in I.A.Nos.713 and 714 of 2017 in O.S.No.303 of 2016 on the file of the II Additional Subordinate Judge, Nagercoil.

(In both the CRPs)

For Petitioner : Mr.H.Arumugam

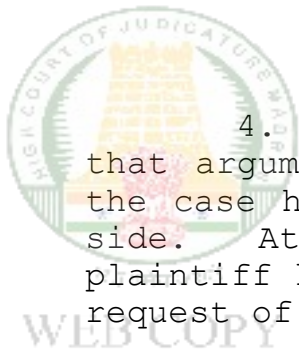
For Respondent : No Appearance

COMMON ORDER

These revisions are directed against the order dated 06.12.2017 passed in I.A.Nos.713 and 714 of 2017 in O.S.No.303 of 2016 on the file of the learned II Additional Subordinate Judge, Nagercoil, dismissing the petitions filed by the petitioner to re-open the case and to call D.W.1. The petitioner herein is the plaintiff in the suit.

2. The plaintiff has filed the suit against the defendant for recovery of a sum of Rs.2,36,000/- together with interest at the rate of 12% per annum till the date of realisation. The said suit is pending for hearing arguments of both sides.

3. Pending suit, the plaintiff filed petitions being I.A.Nos.713 and 714 of 2017 seeking to re-open the case and also recall the evidence of D.W.1 stating that due to inadvertence and bonafide mistake, some important pleadings mentioned in the written statement were left out to be cross-examined on the side of the plaintiff. According to the plaintiff, they are vital for the case. In the circumstances, the case has to be re-opened and D.W.1 has to be recalled for further cross-examination.



4. Resisting petitions, the defendant filed counter stating that arguments on the side of the defendant was commenced and now the case has been adjourned for reply arguments of the plaintiff's side. At this stage in order to prolong the proceedings, the plaintiff has filed these petitions and there is no bonafide in the request of the plaintiff and prayed for dismissal of the same.

5. Upon consideration of the rival submissions, the trial Court dismissed both petitions. Aggrieved by the same, the plaintiff has filed these Civil Revision Petitions.

6. I heard Mr.H.Arumugam, learned counsel for the petitioner. The respondent has not entered appearance. I have perused the materials available on record.

7. The learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the petition.

8. The only point that arises for consideration is whether the impugned order suffers from any infirmity?

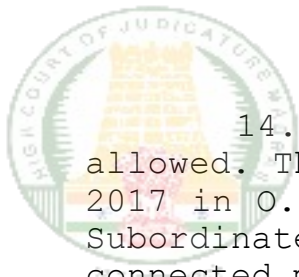
9. The trial Court has got powers to recall the witness. The power to recall the witness under Order 18 Rule 17 of CPC is discretionary and that power is to be exercised in accordance with the sound judicial principles.

10. In the case on hand, the fact remains that DW.1 was already cross-examined and the suit is pending for arguments.

11. In the affidavit of the plaintiff, it is stated that some of the important pleadings mentioned in the written statement were left out to be cross-examined on the side of the plaintiff and therefore, it is necessary to re-open the case and re-call D.W.1. Though details are not elaborated in the affidavit, that may not be the reason for shutting the doors to the petitioner/plaintiff in recalling DW.1.

12. Satisfaction of the Court is essential for recalling the witnesses. The reason given by the plaintiff for recalling of DW.1 is acceptable. Being the litigant and having filed the suit for recovery of the amount, it is for the plaintiff to establish his case.

13. The order of the trial Court dismissing both petitions to recall DW.1 suffers from serious infirmity. Taking into consideration of the nature of the suit, the defendant is directed to present himself for cross-examination when the suit is being listed by the trial Court. The defendant is directed to co-operate in completing the cross-examination on the same date when D.W.1 present before the trial Court. The trial Court is directed to dispose of the suit within a period of one month from the date of receipt of a copy of this order.



14. In the result, these Civil Revision Petitions are allowed. The order dated 06.12.2017 passed in I.A.Nos.713 and 714 of 2017 in O.S.No.303 of 2016 on the file of the learned II Additional Subordinate Judge, Nagercoil are set aside. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The II Additional Subordinate Judge,
Nagercoil.

+1cc to Mr.H.Arumugam, Advocate, SR.No. 71446

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