



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2018

DELIVERED ON : 12.11.2018

CORAM

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

C.R.P. (MD) (PD) No.160 of 2015

and

M.P. (MD) No.1 of 2015

Saroja

.. Petitioner

vs

Vellathurai

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 04.10.2013 passed in I.A.No.946 of 2012 in O.S.No.49 of 2012 on the file of the Principal Subordinate Judge, Tenkasi.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.G.Sridaran

ORDER

This revision has been filed by the petitioner against the order dated 04.10.2013 passed in I.A.No.946 of 2012 in O.S.No.49 of 2012 on the file of the learned Principal Subordinate Judge, Tenkasi, allowing the petition filed by the respondent under Order 8, Rule 9 of CPC.

2. The petitioner is the plaintiff and the respondent is the defendant in the suit. The plaintiff has filed the suit for recovery of a sum of Rs.3,23,000/- together with subsequent interest and for costs. Resisting the suit, the defendant had filed the written statement.

3. For the sake of convenience, the parties are referred to as per their rank in the suit.

4. Pending suit, the defendant had filed I.A.No.946 of 2012 under Order 8, Rule 9 of CPC seeking to receive additional written statement alleging that in the written statement, it has been wrongly stated that the plaintiff's brother was Pugazh Nadar and that borrowal of amount from the plaintiff Saroja and repayment on 04.8.2011. Due to typographical mistake, the year has been wrongly stated as 2011, instead of 2010. Further, it was omitted to state in the written statement that at the relevant point of time, the defendant was working in a Church at Thulukkappatti and on the date of execution of the promissory note dated 17.02.2010, the defendant has not gone to the plaintiff's house at Pavoorchatram and had borrowed money from her. According to the defendant, the said



facts were omitted to be stated in the written statement. Therefore, it was necessary to file the additional written statement. If the additional written statement was received, no prejudice would be caused to the plaintiff.

5. The plaintiff has filed the counter and denied the averments made by the defendant in the petition. It is stated that the plaintiff was a member of Paripavul Church at Thulukkappatti from the year 1998 and the defendant has to prove that one Tamilselvam was member of the said Church. It is stated that the plaintiff had initiated criminal proceedings before the Judicial Magistrate, Tenkasi against the sister of the plaintiff, wherein there was no difference of opinion between the defendant and the plaintiff. In order to strengthen the case of the defendant, he has filed the petition seeking to receive the additional written statement and therefore petition was not maintainable. It is also stated that by way of additional written statement, the defendant wants to introduce a new case and prayed for dismissal of the same.

6. Upon consideration of the rival submissions, the trial Court allowed the petition. Aggrieved by the order of the trial Court, the defendant has filed the present revision.

7. Assailing the impugned order, the learned counsel for the petitioner/plaintiff submitted that the trial Court ought to have seen that the earlier plea in the written statement dated 25.06.2012 was disowned in the additional written statement and also the trial Court ought to have seen that an attempt has been made to resile from the admission already made in the written statement. He would submit that the trial has commenced and the plaintiff was examined in chief and when the suit was pending for cross-examination of P.W.1, the defendant has filed the petition. Moreover, no sufficient reason was established by the defendant to file the additional written statement and that the trial Court erred in allowing the petition.

8. Reiterating the findings of the trial Court, the learned counsel for the defendant submitted that no new case has been introduced by the defendant in the additional written statement and the trial Court, after exercising the power, granted leave to the defendant for filing the additional written statement and therefore, there is no infirmity in the order of the trial Court.

9. I heard Mr.R.Subramanian, learned counsel for the petitioner/plaintiff and Mr.G.Sridharan, learned counsel for the respondent/defendant and also perused the materials available on record.

10. The grievance of the plaintiff is that after commencement of trial, the defendant has filed the petition to receive the additional written statement by introducing a new case and the trial Court erred in allowing the petition filed by the defendant and the same needs to be set aside.



11. According to the defendant, he has not introduced any new case. In the written statement, the relationship of the plaintiff with Pugazh Nadar was wrongly stated by the defendant and also it was omitted to mention in the written statement that at the relevant point of time, the defendant was working in a Church at Thulukappatti.

12. On a perusal of the written statement, this Court finds that the defendant denied the execution of the suit promissory note and in the additional written statement it has been stated that at the time of execution of the alleged suit promissory note, he was doing Church work at Thulukappatti. As rightly held by the trial Court, the burden is heavily on the defendant to prove that he had not executed the suit promissory note in favour of the plaintiff.

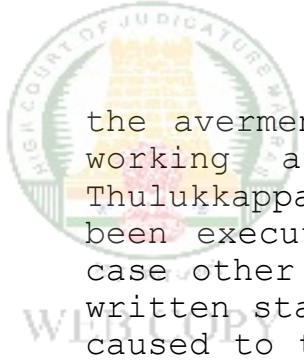
13. It is pertinent to note that in order to prove that he has not executed the suit promissory note, the defendant had filed the additional written statement and the defendant has not taken a different stand than one taken in the original written statement. The contents in the additional written statement were related to the contents stated in the original written statement.

14. As far as the powers of the Court in granting leave for filing additional written statement is concerned, the trial Court should be very lenient and a liberal approach should be made and the Court should not go by technicalities.

15. It is settled that when the defendant had not introduced a new case, the Court should be very liberal in granting the relief under Order 8, Rule 9 of CPC as wide discretion has been given to Courts to adjudicate the matter including subsequent pleadings completely and finally. Under Order 8, Rule 9 of CPC, it is always open to the Court to exercise its discretion to allow the defendant to file any additional written statement. However, the discretion has to be exercised considering the facts and circumstances of the individual cases. The trial Court, after analysing the materials produced before it, rightly allowed the petition of the defendant observing that the contents in the additional written statement were not altering the contents in the original written statement.

16. The object of filing of additional written statement is to supply what might have been omitted in the written statement filed earlier and the additional written statement can be allowed, if it is not likely to cause prejudice to the plaintiff. The Court should grant permission to the defendant for filing subsequent pleadings if they are relevant to prove the facts placed before the Court by the defendant, which causes no prejudice to the plaintiff.

17. In the case on hand, as stated supra, the plea of the defendant was denial of execution of the suit promissory note and



the averments made in the additional written statement that he was working at the relevant point of time in the Church at Thulukkappati, when the said promissory note was alleged to have been executed was only supplementary and does not introduce a new case other than what was pleaded earlier. By filing an additional written statement to supplement the pleadings, no prejudice would be caused to the plaintiff and therefore, the trial Court was right in allowing the petition.

18. As far as commencement of the trial is concerned, only P.W.1 chief examination was completed and P.W.1 yet to be cross-examined by the defendant. At this stage, if additional written statement is received, no prejudice would be caused to the plaintiff.

19. For the foregoing reasons, this Court is of the view that there is no perversity and/or illegality in the order of the trial Court warranting interference. However, the trial Court has omitted to give liberty to the plaintiff to file a re-joinder to the additional written statement. Considering the facts and circumstances of the case and also the plea taken in the additional written statement by the defendant, liberty is given to the plaintiff to file a re-joinder, if any, to the additional written statement filed by the defendant. If P.W.1 wants to re-examine, P.W.1 can do the same.

20. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-II)

To
The Principal Subordinate Judge,
Tenkasi

+1cc to Mr.R.Subramanian,Advocate Sr.No.95116
+1cc to Mr.G.Sridaran,Advocate Sr.No94877

VSV

MK/RSK/SAR2/06.12.2018/4P/4C

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