



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2018

CORAM

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

C.R.P. (MD) (PD) Nos.2791 to 2793 of 2015

and

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

D.Daniel

.. Petitioner/Respondent/Defendant/
in all the CRPs

vs

R.Kalingarayan

.. Respondent/Petitioner/Plaintiff
in all the CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the Order and Decreetal Order passed in I.A.Nos.198, 199 and 200 of 2015 in O.S.No.229 of 2011 dated 18.08.2015 on the file of the Principal Subordinate Judge, Thanjavur District and allow this CRP with costs.

For Petitioner : Mr.R.Rajaraman

For Respondent : Mr.R.Pandi Maharaja

COMMON ORDER

All the three Civil Revision Petitions are arising out of one suit and they have been filed by the sole Defendant as against the orders passed in three Interlocutory Applications in I.A.Nos.198 of 2015, 199 of 2015, 200 of 2015 in O.S.No.229 of 2011 on the file of the learned Principal Sub-Judge, Thanjavur. As far as I.A.No.198 of 2015 is concerned that it is the petition filed under Section 151 of C.P.C for the relief to re-open the case to let in evidence. Another I.A.No.199 of 2015 was filed for the relief to condone the delay in filing the documents mentioned in the petition. As far as the I.A.No.200 of 2015 is concerned that it is the petition filed under Section 151 of C.P.C., to recall the PW1 on the plaintiff's side evidence to enable the petitioner to adduce additional oral and documentary evidence. Considering the evidence and submissions made before him, the learned Trial Judge by his order dated 18.08.2015 allowed those applications. Feeling aggrieved over the orders passed therein in the three

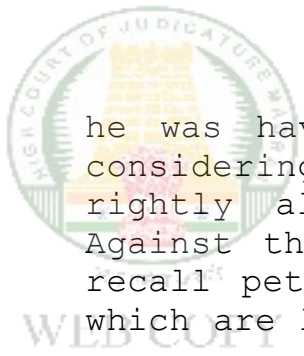


interlocutory applications, the aforesaid 3 revision petitions have been filed in C.R.P.(MD)Nos. 2791 to 2793 of 2015. Hence, all the Civil Revision Petitions are clubbed together and common order is passed as follows:

The Revision Petitioner is the defendant before the trial court in a suit for specific performance. Prior to the filing of the suit, the Respondent/Plaintiff caused a legal notice demanding the Revision Petitioner/Defendant calling upon him that he was ready to execute his part of contract and to come forward for the execution of sale deed in his favour. The said notice was received by the Revision Petitioner/Defendant by entered his appearance, but did not come forward to execute sale deed. Hence, the respondent/plaintiff was constrained to file the aforesaid suit before the learned Trial Court. The Revision Petitioner/Defendant filed his written statement, but had not disputed the financial source or capacity of the Respondent/Plaintiff. However, without raising any such defense in the written statement, abruptly when the Respondent/Plaintiff was subjected for cross examination, question was put forth upon him about his financial source to purchase the suit property. Though in the cross examination, the Respondent/Plaintiff answered he had source to purchase the property, but it was extracted during further cross examination that no proof was field to substantiate his monetary source. Immediately after the completion of the cross-examination, the Respondent/Plaintiff was constrained to file the aforesaid 3 applications.

2. According to the learned counsel for the revision petitioner that the trial court was erred in allowing all the three interlocutory applications and thereby committed gross error to permit the Respondent/Plaintiff fill up the lacuna in his evidence. So, it is his contention that all the three CRPs and the grounds raised thereon are having legal force and thereby they may be allowed.

3. Per contra, the learned counsel for the respondent/plaintiff has submitted that the respondent/plaintiff herein has filed a suit for specific performance and notice was also duly served upon the petitioner/defendant and he has filed his written statement. It is brought to the notice of this court that the petitioner/defendant has not taken any plea or defense by questioning the monetary source of the respondent/plaintiff to purchase the suit property. But, during the cross examination of the respondent/plaintiff, the petitioner/defendant has raised question that the respondent/plaintiff had not sufficient money to execute the contract, hence, he was not in a position to complete the terms and condition of the contract. Since, such a defense was taken by the petitioner/defendant during the trial, the respondent/plaintiff filed applications to reopen the case and to recall the witness for production of bank statement to prove that



he was having financial source to purchase the property. After considering the arguments on either side, the trial court has rightly allowed the applications of the respondent/plaintiff. Against the said orders passed by the trial court in reopen and recall petitions, the instant civil revision petitions are filed which are liable to be dismissed.

4. The learned counsel for the petitioner contended that the respondent/plaintiff filed the petitions for reopen and recall of the plaintiff side evidence after the completion of trial is unsustainable and the same ought to have been considered by the trial court. Further, the learned trial court ought not to have allowed the respondent/plaintiff to fill up the lacuna in respect of readiness and willingness which is root cause of the case. Further, he has also pointed out that the learned trial court has failed to consider the deposition of the respondent/plaintiff in respect of readiness and willingness. Hence, the order passed by the trial court by allowing the petitions filed for reopen and recall is totally illegal and unjustifiable and the same is liable to be dismissed.

5. Per contra, the counsel for the respondent/plaintiff contended that when the application is found to be bona fide and the production of the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that the production of document is valid and sufficient, the court may exercise its discretion and to recall the witnesses to substantiate his case by furnishing fresh evidence. Hence, the trial court is correctly used its discretionary power and allowed the petitions filed for reopen and recall for production of bank statements in the interest of justice and the said orders are not to be interfered with by this Hon'ble Court. Hence, he prayed for the dismissal of the civil revision petitions.

6. I heard Mr. R. Rajaraman, learned counsel for the petitioner and Mr. R. Pandi Maharaja, learned counsel for the respondent and the materials available on record are perused.

7. It is the case of the petitioner that the petition filed under Order XVIII Rule 17 for reopen and recalling of witness and the cross examination of the plaintiff to fill up the lacuna is totally against law. Further, the act of the respondent/plaintiff has clearly shown that he is trying to dragging on the proceedings by filing these types of vexatious petitions. On the other hand, the learned counsel for the Respondent would submit that due to the compelling necessity and to substantiate his case, the Respondent/Plaintiff was constrained to file those applications in accordance with law that too for the first time. He also contended that the Respondent/Plaintiff is entitled to prove his case by filing one or more applications as he is entitled under law. At the same time, he justifies that the filing of those applications

would never stand in the way of the Revision Petitioner/Defendant in disproving the case of the Respondent/Plaintiff.

8. The perusal of the documents would show that these applications have been filed for the 1st time that too because of the questions put forth upon the Respondent/Plaintiff about his capacity to enter into the contract of sale deed and also his capacity to purchase the suit property. In the considered opinion of this court, it is the bounden duty of either party to prove their case by furnishing evidence in the manner known to law. Here in the case on hand, the applications filed before the learned Trial Court was for the reason to prove his capacity to complete the terms of the contract of sale. It is the core issue even to decide the lis as far as the suit for specific performance, when that being so, the party who under the compulsion to prove his capacity to discharge his part of contract ought to have filed applications to furnish evidence in that line. It would not affect the defense of the Petitioner/Defendant in any manner, but that could be the real meaning for a full fledged trial. When provisions are available in the Civil Procedure Code to let in evidence even in the appeal proceedings such applications can be filed before the Trial Court by the parties concerned to prove their case which in the considered opinion of this court is permissible, when those applications are filed for justifiable cause.

9. In view of the above discussion, I do not find any infirmity or illegality in the common order passed by the Court below in I.A. Nos.198, 199 and 200 of 2015 in O.S.No.229 of 2011 and the same is hereby confirmed. Accordingly, these Civil Revision Petitions are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Thanjavur District.

+1cc to Mr.R.Rajaraman, Advocate Sr.No.66740

VSV

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