



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.R.P. (MD) No.1099 of 2018
and
C.M.P. (MD) .No.4751 of 2018

Pondurai .. Petitioner /
1st Respondent / 1st Defendant

vs.

1.A.Yesuvadian ..1st Respondent / Petitioner/
Plaintiff

2.Raveendran

Pappu Ammal (died)

3.Leela Glory

4.Kattalankulam Village Panchayat
through its President,
Kattalankulam,
Thoothukudi District.

.. Respondents 2 to 4/
Respondents 2,4 &5 /
Defendants 2,4 & 5

(Respondents 2 to 4 remained
exparte in lower Court. Hence
notice may be dispensed with)

PRAYER : Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decretal order passed
in I .A.No.707 of 2017 in O.S.No.104 of 2011 dated 12.04.2018 on
the file of the Sub Court, Thoothukudi.

For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel
for M/s.N.Ga.Natraj
For Respondent No.1 : Mr.G.Thalaimutharasu
Respondents 2 to 4 : Exparte

ORDER

The first respondent herein was the President of
Katalangulam Village Panchayat during the period 2001-2006. It
appears that he suffered an order of surcharge and the recovery
certificate was issued against him. The plaintiff's case is that
he was made to suffer such an order of surcharge, because of the
activities and omission of one E.J.Pondurai. Therefore, he filed
O.S.No.104 of 2011 on the file of Sub Court, Thoothukudi, for
directing the said Pondurai to pay the sum of Rs.3,49,202/-



together with interest either to the plaintiff or to the account of the Katalangulam Panchayat. A defence was taken that the principals of Pondurai were not impleaded as defendants. Therefore, the principals of Pondurai were impleaded as defendants. The local body represented by its President was also impleaded as the fifth respondent.

2. Trial commenced in this case and plaintiff side examination was closed. DW1 was being cross-examined. At that stage, I.A.No.707 of 2017 was filed for amending the plaint. The plaintiff pleaded that he wanted to contest the local body elections and since the surcharge certificate issued against him was an impediment, he was constrained to satisfy such certificate by remitting the amount in question. Since he remitted the amount in question, the question of paying the said amount by the contesting defendants directly to the Kattalangulam Panchayat does not arise. The said amount has to be paid to him by the contesting defendants. The said amendment application was taken and the Court below allowed the same by order dated 12.04.2018. The correctness of the said order is under challenge in this civil revision petition.

3. Heard the learned senior counsel appearing for the revision petitioner as well as the learned counsel appearing for the plaintiff.

4. As rightly contended by the learned senior counsel for the revision petitioner, this is a post-trial amendment and that therefore a different yardstick should be adopted. This Court went through the contents of the affidavit filed in respect of I.A.No.707 of 2017. But the plaintiff has not averred the relevant details. It is absolutely vague. He has not stated as to when the fifth respondent compelled him or as to when the amount in question has remitted by him to the account of the Panchayat. The plaintiff has to show that in respect of his due diligence, he could not have raised the matter before the commencement of trial.

5. The Hon'ble Supreme Court in the decision reported in **2012 (2) CTC 94** in the case of **J.Samuel & Others vs. Gattu Mahesh & Others**, has observed as follows:

"13. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An Advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term "Due diligence" is specifically used in the Code so as



to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial."

6. In this case, the plaintiff has not projected this element at all in his amendment application. Therefore, the Court below was clearly in error in allowing the application. In this view of the matter, the order impugned in this civil revision petition is set aside.

7. But the matter cannot rest there. It is seen that the plaintiff wants to place on record the fact that he has satisfied the surcharge certificate. This aspect of the matter can very well be brought out by raising the relevant question and by marking the relevant documents. Thus, by allowing this civil revision petition, the plaintiff will not suffer any prejudice. Giving liberty to the plaintiff to bring this aspect on record by marking the remittance slip, the Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Sub Judge,
Thoothukudi.
2. The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Thalaimutharasu, Advocate Sr.No.78187

+1cc to M/s.N.Ga.Natraj, Advocate Sr.No.78259

PJL

VB/SKN/SARS/10.09.2018/3P/6C

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