



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD) .No.1849 of 2017

and

C.M.P(MD)No.9727 of 2017

Jain Vidhyalaya School
Gujarath Seva Samaj Educational Trust
Rep. by its Secretary
Thiruppalai, Madurai.

... Petitioner/Petitioner/
Respondent /Defendant

Vs.

S.Narayanan

...Respondent/Respondent/
Petitioner/ Plaintiff

PRAYER:- Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 06.10.2016 made in I.A.No.924 of 2014 in I.A.No.645 of 2010 in O.S.No.239 of 2010 on the file of District Munsif, Melur.

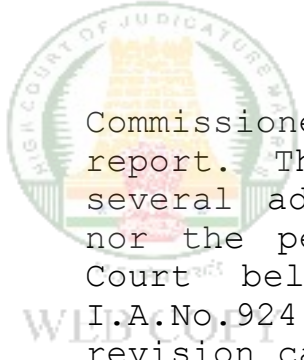
For Petitioner	:	Mr.V.Janakiramulu
For Respondent	:	Ms.A.Banumathi

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 06.10.2016 passed by the learned District Munsif, Melur in I.A.No.924 of 2014 in I.A.No.645 of 2010 in O.S.No.239 of 2010.

2. The facts of the case, in nutshell, are as follows:

2.1. The suit in O.S.No.239 of 2010 was filed by the respondent herein, as plaintiff, seeking the relief of declaration, permanent and mandatory injunction. In the said suit, the respondent/plaintiff has filed an interlocutory application in I.A.No.645 of 2010 for appointing an Advocate Commissioner, which was allowed as prayed for, followed by which Commissioner's report was also filed. Thereafter, the petitioner herein/defendant has filed an interlocutory application in I.A.No.924 of 2014 for re-issuance of warrant to the same Commissioner or to appoint a



Commissioner afresh, citing some flaw in the earlier Commissioner report. The said petition was allowed on 31.03.2016. Despite several adjournments, neither the Commissioner filed the report nor the petitioner present before the Court and therefore, the Court below, by an order dated 06.10.2016, has dismissed I.A.No.924 of 2014. Aggrieved over the same, the present civil revision came to be filed.

3. The learned Counsel for the petitioner would submit that having allowed the application for re-issue of warrant on 31.03.2016, the lower Court, for non-submission of Commissioner report, has erred in dismissing the application, at later point of time. He would further submit that in order to establish his case, Advocate Commissioner's report is just and necessary.

4. The learned Counsel for the petitioner would further submit that the Advocate Commissioner appointed by the Court below has not even turned up to receive the warrant and therefore, he would pray for appointment of another Advocate Commissioner, so as to put forth his case with Commissioner report.

5. On the other hand, the learned Counsel appearing for the respondent/plaintiff would submit that the petitioner, colluding with the Commissioner, is adopting delay tactics, so as to drag on the proceedings. The learned Counsel for the respondent has no serious objections in appointing a fresh Commissioner, but, she would submit that the respondent/plaintiff is an aged person, about 86 years and therefore, she would pray for early disposal of the suit proceedings.

6. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

7. It is seen that the learned District Munsif has earlier allowed the application for re-issuance of warrant and for non-submission of report, the same was dismissed later.

8. In view of the submissions of both the parties, this Court, while declining to interfere with the impugned order, directs the learned District Munsif, Melur to appoint a fresh Advocate Commissioner, within a period of one week from the date of receipt of a copy of this order. Thereafter, the Advocate Commissioner shall file his report within a further period of two weeks. On receipt of the same, the learned District Munsif, Melur shall dispose of the suit, as expeditiously as possible, in any event not later than 31.05.2018. Needless to mention that if the learned District Munsif finds that the petitioner is adopting any delay tactics, he is at liberty to proceed with the suit, with the ~~main case~~ <https://hcmr.court.gov.in/cv/index> on record, so as to dispose of the suit within the time stipulated by this Court.



9. With the above directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Melur.

+1cc to Mr.Ms.A.Banumathi, Advocate Sr.No.46334

GK

VB/KKR/SAR4/16.02.2018/3P/3C

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