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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.04.2018
DELIVERED ON : 23.08.2018

CORAM

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

C.R.P. (MD) (PD) Nos.2046 and 2047 of 2016
and
CMP (MD) No.9620 of 2016

A.Azhagarsamy

... Petitioner/Petitioner/
Plaintiff

vs

Sri Nachiyappa Gnanadesigar (died)
1.M.Meyyappan
2.Arockiaraj

... Respondents/Respondents/
Defendants

Civil Revision Petitions filed under Article 227 of Constitution of India against the order dated 22.6.2016 made in I.A.Nos.360 and 361 of 2016 in O.S.No.92 of 2011 on the file of the District Munsif Court, Sivagangai.

For Petitioner	:	Mr.D.Shanmugaraja Sethupathi
For Respondents	:	Mr.C.M.Arumugam for Mr.R.Pandi Maharaja (in both cases)

COMMON ORDER

These Civil Revision Petitions have been filed by the petitioner against the order dated 22.6.2016 passed in I.A.No.360 and 361 of 2016 in O.S.No.92 of 2011 on the file of the District Munsif Court, Sivagangai.

2. The petitioner herein, who is the plaintiff in the suit, has filed I.A.Nos.360 and 361 of 2016 seeking to re-open the case of the plaintiff's side and to recall P.W.1 for marking of certain



3. According to the plaintiff, the suit was posted for judgment on 27.4.2016. Since some of the documents were in the hands of his counsel at Madurai Bench of the Madras High Court, the same could not be filed in time. Despite attempts made by the petitioner to get those documents from his counsel, he could not able to contact his counsel and get the documents. Now only the petitioner obtained documents from his counsel and those documents are very relevant to his case. Therefore, in order to mark those documents, it is necessary to re-open the case of the plaintiff and to re-call P.W.1 for examination.

4. The respondents have not filed the counter.

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

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents and also perused the materials available on record.

7. On a perusal of the affidavit filed in support of I.A.Nos.360 and 361 of 2016, this Court finds that the plaintiff has not mentioned the description of documents sought to be marked. He simply stated that since some of the documents were in the hands of his counsel at the Madurai Bench of the Madras High Court and now only, he got those documents and also in order to mark those documents, the case of the plaintiff has to be re-opened.

8. In the absence of the description of the documents in the petition and also purposely omitted to file the documents along with the petitions, I am of the view that there is no bona fide in the petitions filed by the plaintiff.

9. It is to be noted that the trial was commenced on 12.11.2013 and after completion of the examination of witnesses and upon hearing the arguments of both sides on 29.3.2016, the suit was posted for judgment on 27.4.2016.

10. In its order, the trial Court has recorded that between 12.11.2013 and 29.3.2016, the plaintiff has re-opened his case for four times and now at the fifth time, in order to drag on the proceedings, he has filed the petition. The aforesaid finding of the trial Court is acceptable on the ground that despite several opportunities granted to the plaintiff, he has not marked all the documents in his possession to prove his case.

<https://hcservices.ecourts.gov.in/hcservices/>

11. As plaintiff, he is bound to produce the documents, which were sought to be marked in the case, at the time of filing



of the plaint itself. Only on an extraordinary circumstances, the party can file new documents during trial, that too with sufficient reasons. Admittedly, in the suit, the plaintiff has not obtained any leave to file new documents during trial and/or post trial before judgment.

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12. It is well settled that the power to recall any witness under Order 18, Rule 17 of C.P.C., can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

13. In **Bagai Construction, through its Proprietor, Lalit Bagai v. Gupta Building Material Store, reported in 2013 (1) MWN (Civil) 573**, the Hon'ble Supreme Court held as under:

"11. In such circumstances, as rightly observed by the Trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the Plaintiff cannot be permitted to file such Applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the Trial Court, there is no acceptable reason or cause which has been shown by the Plaintiff as to why these documents were not placed on record by the Plaintiff during the entire trial.

12. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the Plaintiff came forward with such an Application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151, C.P.C."

14. Undisputedly, the evidence of both sides was over and the arguments of both sides was also over and now the suit was pending for pronouncing judgment. After making attempts to protract the proceedings, the plaintiff eventually filed the petitions on 20.4.2016, which cannot be entertained and the trial Court has rightly dismissed the petitions.

15. In the light of the decision in **Bagai Construction, through its Proprietor, Lalit Bagai v. Gupta Building Material Store**, supra, this Court does not find any illegality or irregularity in the order impugned in these Civil Revision Petitions.



16. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The District Munsif,
Sivagangai.

VSV
TE/JM/RSK/SAR-3 : 14/09/2018 : 4P/2C

order made in
C.R.P. (MD) (PD) Nos. 2046 and 2047 of 2016
23.08.2018