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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.1133 of 2013

and

M.P. (MDNo.1 of 2013

Saipunnisha : Petitioner

vs.

1.P.Chellappa
2.Rajammal : Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 05.12.2012, passed in I.A.No.854 of 2012, in O.S.No.338 of 2010 on the file of the 1st Additional District Munsif, Tirunelveli.

For Petitioner :Mr.M.P.Senthil

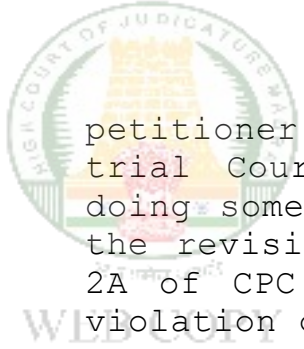
For Respondents :Mr.P.T.Ramesh

ORDER

This civil revision petition is filed by the plaintiff in the suit in O.S.No.338 of 2010 on the file of the 1st Additional District Munsif, Tirunelveli.

2.The brief facts that are necessary for the disposal of this petition are as follows:

2.1.The revision petitioner, as plaintiff, filed a suit in O.S.No.338 of 2010, before 1st Additional District Munsif, Tirunelveli, for permanent injunction restraining the respondents / defendants from putting up any window in the wall on the eastern side of the plaintiff's house. It is stated by the petitioner that in the interlocutory application filed by the revision petitioner, the lower Court granted temporary injunction restraining the defendants from putting up any window in the disputed wall. It is further stated by the civil revision



petitioner that despite an order of injunction granted by the trial Court, the defendants have violated the Court order, by doing some modification in the wall. It is not in dispute that the revision petitioner has filed a petition under Order 39 Rule 2A of CPC for punishing the respondents for doing something in violation of the order passed by the lower Court.

2.2.The revision petitioner, thereafter, filed an application in I.A.No.854 of 2012, in the suit for amending the plaint, which is in the nature of including a further prayer to grant a decree for mandatory injunction to remove the window fixed by the defendants in the wall that is in existence on the eastern side of the plaintiff's house. This amendment petition was opposed by the respondents herein by stating that a petition for amendment after the commencement of the trial is not maintainable. The lower Court also dismissed the petition, mainly on the ground that an amendment petition, after commencement of the trial, cannot be entertained. Aggrieved over the said order, the present civil revision petition has been filed.

3.It is the specific contention of the civil revision petitioner that the amendment was necessitated only because the defendants have done some alteration in violation of the order of injunction. The law is settled that if anyone does something in violation of Court order, the Court has got inherent discretionary power to set right and to restore status-quo ante. In this case, when the petitioner has raised a serious issue about the conduct of the defendants and filed a petition under Order 39 Rule 2A of CPC, the application for amendment, which is necessitated only because of the illegal activity alleged to have been committed by the defendants, the Court cannot dismiss the application, merely on the ground that the petitioner has filed the petition after commencement of trial. The merits of the petition depends upon various factors. In this case, absolutely, there is nothing to doubt the *bona fide* of the revision petitioner / plaintiff, who has filed the petition for amendment, which is stated to have been filed after the defendants have done something in violation of Court's order. Since, the relief in the petition by way of amendment may pave way for restoration of status-quo, the Court cannot ignore the factual basis and gave a finding that the petition was belated and it was filed after the commencement of trial, which has no relevance to consider the present application for amendment. In a case where amendment of pleading is due to change of circumstances or due to subsequent events, unless there is undue delay, the petition cannot be thrown out on the ground that petition is after the commencement of trial.

4.As a result, this civil revision petition is allowed and the order in I.A.No.854 of 2012, in O.S.No.338 of 2010 on the file of the 1st Additional District Munsif, Tirunelveli, is set aside.



However, there is no order as to costs. Consequently, connected miscellaneous petition is closed. Liberty is given to the respondent to file additional written statement, if they choose to file.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The 1st Additional District Munsif, Tirunelveli.
2. The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 cc to M/S.M.P.Senthil, Advocate, IN SR No.64594

C.R.P. (PD) (MD) No.1133 of 2013
28.04.2018

CMR

PK/RSK-SKN/SAR-4/23.05.2018 : 3P/5C