

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(PD).No.2484 of 2007
and
M.P.No.1 of 2007

1.Syndicate Bank Employees,
Co-operative Thrift and Credit
Society Limited,
Represented by its President
No.8, Ramasamy Street,
Woods Road, Chennai-600 002.

2.M.A.Balakrishnan,
Attender,
Syndicate Bank,
Peravallur Branch.

... Petitioners

vs.

1.A.Janardhanam
Clerk,
Syndicate Bank,
Formerly at: Fort St.George Branch,
Chennai.
Now at: Central Accounts Office,
T.Nagar, Chennai-17.

2.Sarmila Building Contractors,
Rep. by its Proprietor,
R.Balraj,
No.25, New No.6,
Gopalapuram 2nd Street,
Thiru.Vi.Ka nagar,
Chennai - 82.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 05.07.2007 in IA.No.4959 of 2007 in OS.No.3246 of 2004 on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

For Petitioners : No Appearance

For Respondents : Mr.K.V.Ananthakrishnan for R1

ORDER

The Civil Revision petitioners are the defendants in O.S.No.2484 of 2007 on the file of the VI Assistant Judge, City Civil Court, Chennai. The respondents/plaintiffs filed the suit for declaration that the bill dated 30.09.2002 issued by the third defendant and certified by second defendant for payment is false and fabricated and for a permanent injunction restraining the defendants from holding the Board of Directors meeting on 18.07.2004 or on any other future days without appending the explanatory statement to the special resolution.

2.The defendants 1 to 3 filed their written statement and both the parties went for trial. P.W.1 filed proof affidavit and he was cross examined

by the defendants 1st and 2nd. However, the 3rd defendant did not cross examine P.W.1, despite several opportunities were given to him and subsequently the evidence of the plaintiff was closed.

3.The defendants 1 and 2 filed a petition in I.A.No.4959 of 2007 under Section 151 of the Civil Procedure Code, to reopen the evidence of P.W.1 for further cross examination. The 1st respondent/plaintiff filed his counter. The 2nd respondent herein (3rd defendant) did not file any counter. The learned VI Assistant Judge, City Civil Court, Chennai vide his fair and decreetal order dated 05.07.2007 dismissed the application by observing that:

“9.PW.1 was cross examined by D.1 and D.2 on 12.06.2006 in full and posted for cross by D.3. At several hearings D.3 has failed to cross examine PW.1 and evidence was closed. Again D.3 has filed petition to recall PW.1 and allowed on 05.03.2007. Till then D.1 and D.2 did not take any steps to recall PW.1 for further cross examination. No proper reason. Hence this petition is dismissed with costs.”

4.The specific contention of defendants 1 and 2 is that certain important issues have not been elicited from P.W.1 during the course of cross examination and therefore P.W.1 must be recalled for the purpose of cross examination. The learned VI Assistant Judge, without considering this aspect, straight away dismissed the application by contending that the defendants 1 and 2 did not avail their opportunity, when the P.W.1's evidence was posted for cross examination by the 3rd defendant. The Trial court should have given opportunity to the defendants 1 and 2 to further cross examine P.W.1 especially when the defendants have not so far let in any evidence on their side. Merely because D1 and D2 did not avail their opportunity when the matter was posted for cross examination of D3, D1 and D2 are not barred from filing a petition to recall P.W.1. It is also to be pointed out that the suit is of the year 2004 and this present Civil Revision Petition was filed in the year 2007. Since an order of injunction was granted, the suit was kept pending for 15 years without any progress.

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5.In the facts and circumstances of the present case, the Civil Revision Petition is allowed and the trial Court is directed to provide sufficient opportunity to the defendants 1 and 2 to cross examine P.W.1.

The trial court is further directed to dispose of the suit in O.S.No.3246 of 2004 within a period of three months from the date of receipt of a copy of this order. The Civil Revision petitioner should be ready to cross examine P.W.1 and they should not seek any adjournment. The trial court is further directed to post the case on day to day basis. With the above observations the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition also dismissed.

11.07.2019

rst

Index : Yes/No

Note: Issue Order Copy on 15.07.2019

To

The learned VI Assistant Judge,

City Civil Court, Chennai.

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R.HEMALATHA, J.

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