

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2018

PRONOUNCED ON : 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP(PD).No.1664 of 2018
and CMP.No.9096 of 2018

Dr.C.Anantharaman

.. Petitioner

Vs

1.Smt.Sathyavathi
2.K.Raghavendra
3.K.Srinivasan
4.K.Suriyanarayanan

.. Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.04.2018 made in IA.No.2305 of 2018 in OS.No.10035 of 2010 on the file of the V Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Thiagarajan

For respondents : Notice served. No appearance.

ORDER

The relief sought for in the revision petition is to set aside the fair and decreetal order dated 20.04.2018 made in IA.No.2305 of 2018 in OS.No.10035 of 2010 on the file of the V Additional Judge, City Civil Court, Chennai.

2 The revision petitioner is the plaintiff in OS.No.10035 of 2010 and the respondents herein are the defendants in the above suit. After filing of the suit, written statement was filed by the defendants, when the trial was commenced after examining the plaintiff side evidences, the case was posted for defendants side evidence. At that time, the respondents filed an application before the trial Court in IA.No.2305 of 2018 under Order VIII R 1-A(3) of the Code of Civil Procedure, 1908 to receive the additional documents as stated in the application. The learned V Additional Judge, Chennai after receiving counter and enquiry allowed the petition for receiving additional documents subject to proof and relevancy and admissibility at the time of marking the documents.

3 Challenging the said order, the petitioner/plaintiff is before this Court on the grounds that the learned judge has not understood the scope and ambit of an application filed under Order VIII Rule 1A(3) CPC, 1908 and granted leave to the respondents/defendants to file and receive certain inadmissible documents in the suit filed by the petitioner/plaintiff. Despite protest and objections raised by the petitioner most of the documents are in existence even prior to

institution of the suit, as such there is no valid, tenable or plausible reasons stated in the affidavit for reception of those documents after condoning the delay in filing such documents after framing of issues by the trial Court. The trial Court failed to consider the law laid down by the Hon'ble Apex Court and this Court. Unless the documents sought to be received are relevant for the purpose of deciding the case and those documents have been referred to in the pleadings and in the absence of any pleadings the documents sought to be received ought not to have been received by the learned trial judge, the learned trial judge mechanically with non application of mind and without following the procedure indicated by the Hon'ble Apex Court in the decision reported in **2010 (8) SCC 423** in the case of **Shalimar Chemical Works Ltd., V. Surendra Oil and Dal Mills (refineries) and others** has accepted.

4 The learned counsel for the petitioner would further submit that though the suit is filed in the year of 2008 and written statement was filed during 2010 and they have not filed these documents and not stated any reasons as to why they have not filed those documents along with the written statement filed by them. Even some of the documents sought to be marked as additional documents have been in

existence even during the filing of the suit itself. The respondents have not stated any reasons as to why they have not filed along with the other documents at the time of filing written statement. Further all the documents are xerox copies and the respondents have not stated in what way those documents are relevant to this case. The learned trial judge simply allowed the application by stating that the application cannot be rejected on the ground of mere technicality, it is also observed in what way these documents are relevant to the case and helpful to the case of the defendants/respondents. The trial judge has not given any effect to the judgments and failed to follow the law laid down by the Hon'ble Apex Court and this Court which warrants interference.

5 The case of the respondents is that the petitioner/plaintiff filed the suit in the year of 2008 and the respondents/defendants in their written statement have clearly stated that how these documents are related and why they have not filed those documents in earlier occasion. Therefore, as per Order VIII Rule 1-A(3) of the CPC they sought for leave of the Court to produce those documents. At this stage, the Court has to see only whether the leave can be granted or not. Further, whether the xerox copies of the documents can be

marked or not, can only be decided at the time of marking the documents. The admissibility and validity of the documents can be decided only after the trial and at the time of deciding the case. The trial Court has rightly observed that this issue can be raised subject to proof, relevancy and admissibility at the time of cross examining the witnesses. The respondents have not been examined so far. Therefore, an opportunity should be given to the petitioner to put forth their defence. During the cross examination if the documents are marked no prejudice would be caused to the revision petitioner. However, the validity of the documents can be decided only by the trial Court at the time of deciding the case. Under these circumstances, there is no perversity in the order passed by the trial Court and does not require any interference by this Court.

6 Heard the learned counsel for the petitioner and though notice was duly served on the respondents/defendants none appeared on behalf of the respondents/defendants and perused the materials available on record.

7 Admittedly, the revision petitioner has filed the suit in CS.No.684 of 2007 before this Court and the same was transferred to

the file of learned V Additional Judge, City Civil Court, Chennai and renumbered as OS.No.10035 of 2010, after receiving summons, the respondents entered appearance through counsel and also filed written statement on 22.03.2010. Thereafter, the petitioner/plaintiff filed proof affidavit for examination of witnesses, after closing the evidence of petitioner/plaintiff side. The respondents/defendants filed proof affidavit and at that time, they filed application in IA.No.2305 of 2018 in OS.No.10035 of 2010 for receiving the documents sought for in the petition. The learned judge, after taking the application on file given opportunity to the revision petitioner to file his counter and after enquiry the learned judge granted leave on the ground that the Court need not adopt the technicality in rejecting the application for receiving additional documents and granted leave. The revision petitioner was given liberty to put forth his objections at the time of marking the documents as well as during cross examination of witnesses. Originally, at the time of filing application 12 documents were filed by the defendants containing xerox, true copies and originals. Subsequently, they have replaced the xerox copies by filing originals and true copies. The learned judge has granted leave to produce those documents under Order VIII Rule 1-A(3) of CPC. Rule 1-A(3) of the above order reads as follows :

“**O.8 R.1-A (3)** – A document which ought to be produced in the Court by the defendant under this rule, but is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the Suit.”

8 The Court has an ample power to condone the delay and grant the leave the same is the discretionary power of the Court, insofar as granting of leave is concerned subject to the satisfaction of the Court, the Court can exercise the judicial discretion. In this case, the trial Court has rightly exercised its discretion and granted leave. As far as the admissibility and marking the documents are concerned, it is useful to refer the decision of the Hon'ble Apex Court in the judgment of **Bipin Shantilal Panchal v. State of Gujarat and another** reported in **(2001) 3 SCC 1**, wherein the Hon'ble Apex Court held as follows :-

“When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the

objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. There is no illegality in adopting such a course."

9 Insofar as the admissibility of the documents are concerned, the same shall be decided at the time of marking the documents. In this case, on reading of the affidavit and the documents also order of granting of leave by the learned judge no way prejudiced to the case of the revision petitioner. The objections of the revision petitioner can be raised at the time of marking the documents and also with regard to admissibility of the documents, the trial Court can always record the objections and validity could be decided at the time of pronouncing judgment as per the guidelines given by the Hon'ble Supreme Court.

10 As stated, the revision petitioner will be given an opportunity while cross examining the witnesses and the petitioner is at liberty to raise all the points relating to admissibility of the documents and the validity and relevancy of the documents shall be decided after completing the evidence. Mere receiving the documents and marking the documents will not be prejudicial to the case of the revision petitioner. Therefore, the trial Court is directed to follow the guidelines given by the Hon'ble Apex Court in the decision referred to above while marking the documents. This Court finds there is no perversity in the order passed by the trial Court and finds no valid reason to interfere with the order passed by the trial Court.

11 With the above directions, the civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

24.04.2019.

Index : yes/No
Speaking : Non Speaking order
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To

The V Additional City Civil Court, Chennai.

P. VELMURUGAN,J.

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**Pre-Delivery Order in
CRP(PD).No.1664 of 2018**

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24.04.2019.