

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD).No.1293 of 2019
and CMP No. 8437 of 2019

K.R.T.Ragunathan

... Petitioner

Vs.

N.Subramani

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India pleased to set aside the fair and decreetal dated 13.02.2019 passed in I.A.No.12 of 2019 in O.S.No.68 of 2018 on the file of the 3rd Additional District Judge, Salem.

For Petitioner : M/s.K.Myilsamy

For Respondent : Mr.R.Marudhachalamoorthy

ORDER

Challenging the fair and decreetal order dated 13.02.2019 passed in I.A.No.12 of 2019 in O.S.No.68 of 2018 on the file of the Illrd Additional District Judge, Salem the present civil revision petition has been filed.

2. When the defendant's side evidence was due to commence at that

stage the defendant had filed the petition subject matter of the revision for have to file an additional written statement. The plaintiff/respondent has filed suit in O.S.No.68 of 2018 for recovery of money based on the promissory note. The defendant has filed his written statement denying the execution of the promissory note and the borrowal of money and had also taken out the specific plea that the suit promissory note had been created with the connicance of the plaintiff's bank and that the suit was time barred. After the completion of plaintiff's side evidence, the matter was posted for the defendant's side evidence. The defendant has come forward with the impugned petition and the reason for filing the above application has been extracted as hereunder:-

"2. I submit that when I have been preparing for trial, it is found out that material defences have been mistakenly failed to be stated in the written statement.

3. The defences are very much necessary for the complete adjudication of the dispute in the suit. I have been advised to file an additional written statement to avoid technical objections by otherside."

3. A reading of the additional written statement clearly indicate that an entirely new line of defence has been adopted by the revision petitioner. After the completion of the plaintiff's side evidence on the basis of the original pleading put forward by the defendant, the application has been

dismissed by the learned III Additional District Judge, Salem by stating that there was a complete variance in the defence now put forward. Challenging the same defendant/revision petitioner is before this Court.

4. Heard both sides and perused the available records.

5. The learned counsel for the revision petitioner submitted that filing of an additional written statement at any stage of suit proceedings does not in any manner prejudice the interest of the plaintiff and apart from that the defendant has a prerogative right to take instant plea as a defendant can take inconsistent plea. He further submitted that the dismissal order passed by the IIIrd Additional District Judge, Salem is erroneous and that the application has to be allowed.

6. Per contra, the learned counsel Mr.R.Marudhachalamoorthy appearing on behalf of the respondent/caveator submitted that the plaintiff will be put to serious prejudice if the petition is allowed that too after the completion of evidence on the plaintiff's side in view of the new line of defence brought by the revision petitioner. He would rely upon the judgment rendered by this Court in support of his argument in the case of ***A.Manohar Prasad and others Vs Prasad Production Pvt.Ltd.***, reported in

MANU/TN/7390/2018 : 2019 - 1 - law weekly 54 at paragraph No.9 which is extracted as hereunder.

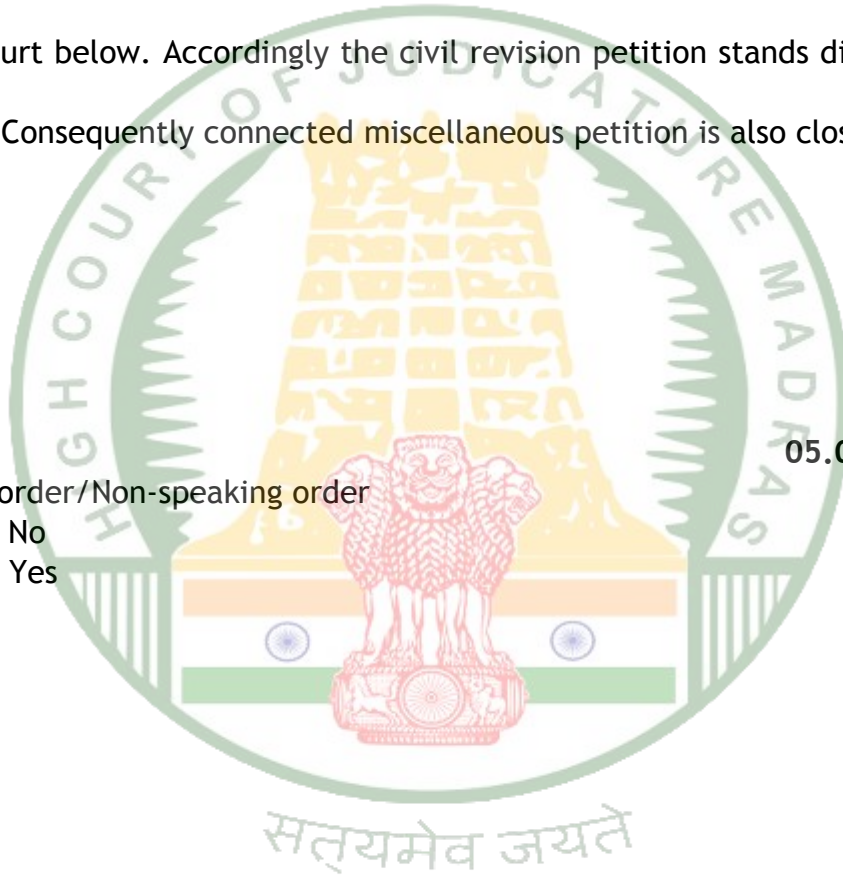
"9. An additional aspect that may require consideration by the trial Court, when an application is filed under Order 8 Rule 9 of the Civil Procedure Code when the trial had already commenced and the plaintiff's evidences has been completed, the evidence already let in by the plaintiff, in the absence of any plea not set forth in the original written statement, may render such evidence futile. One of the basic principle of the law of pleadings is that, before the parties go for trial, the required proof should be fully set forth in the respective cases through their pleadings to enable the trial to take a logical course, based on the pleadings already let in. By bringing in a new or additional or inconsistent pleas in the additional written statement, the plaintiff may be put to serious prejudice and hardships.

7. A reading of the written statement originally filed, and the additional written statement that is now sought to be introduced clearly show the divergent stand that has been taken by the revision petitioner. The pleadings are not only inconsistent, but also totally different from the original pleadings. As observed by this Court in the **A.Manohar Prasad** case (cited supra) the plaintiff having completed his evidence on the basis of the original pleading would turn futile and the plaintiff will be asked to submit

proof on an entire new subject of pleadings. There is also possibility of a plea to be taken that the plaintiff has come forward with inconsistent pleadings which is not permissible. In the light of the above discussion, I am of the opinion that there is no infirmity or irregularity in the order passed by the Court below. Accordingly the civil revision petition stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Speaking order/Non-speaking order
Index : No
Internet : Yes
dpq

05.04.2019



WEB COPY

P.T.ASHA.J.

dpq

To
The III Additional District Court,
Salem.



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