

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

CRP.No.1453 of 2019
and
C.M.P.No.9443 of 2019

1.Poovathal

2.Vijayalakshmi ...Petitioners/Plaintiffs

Vs.

1.Nandhakumar

2.S.Balasubramanian ...Respondents/Defendants

This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 12.03.2019 made in I.A.No. 101 of 2019 in O.S.No. 47 of 2017, on the file of the Principal District Court, Tiruppur.

For Petitioners : Mr.K.S.Karthik Raja

For R1 : Mr.C.R.Prasanan

For R2 : Not ready in notice

O R D E R

The above Civil Revision Petition is filed challenging the order passed by the learned Judge in I.A.No. 101 of 2019 in O.S.No. 47 of 2017, insofar as, it relates to the dismissal of the petition for re-calling DW1 and DW2.

2 The main grievances of the petitioner is that on the date when the DW1 was cross-examined, the Advocate's grand father has passed away and therefore, the cross-examination was done hastily and few vital questions had been left out while cross-examining the witnesses. The revision petitioners seek to have the order set aside.

3 Mr.C.R.Prasanan, learned counsel appearing on behalf of the first respondent, would submit that the contention that

questions were not completed is totally false because, the learned counsel for the petitioners had fully cross-examined the witnesses and a reading of the cross examination of the DW1 would demonstrate that the evidence was completed and closed and thereafter an endorsement was made that there was no re-examination of the witnesses and therefore, the allegation that has been made in the affidavit is totally false.

4 He would further submit that pursuant to the impugned order, the plaintiff has also cross-examined DW2 and DW3 and this revision is nothing but an after thought and an attempt to prolong the proceedings.

5 Heard both the counsel.

6 From the perusal of the records, it is seen that DW1 was cross-examined as early as in the year 2013, ultimately, the evidence was completed only in the year 2018 and there was a delay caused by the plaintiff. The cross-examination of the defendants witness has been done by the plaintiffs without much delay and the reason why the application has been moved is only on account of the fact that counsel's paternal grand-father had died at around 1.30 p.m. while the cross examination was on. Therefore, there is every possibility of the learned counsel not having been able to cross-examine the witness on some points. It is further seen that on 27.02.2019, when the matter was posted for the DW2 evidence, the chief-examination was done and thereafter the plaintiff side had filed an affidavit stating that since the learned counsel grand father's ceremony was on the very same day, the matter may be adjourned. The learned Judge however proceeded to close the said petition.

7 Considering these factors, this Court is of the opinion that the revision petitioners/plaintiffs should be given a chance to cross-examine the DW1. However, the learned counsel for the petitioner assures this Court that he will not ask more than five questions in cross-examination and this is recorded. Therefore, if the petitioners again proceeded to ask sixth question, the Court can immediately stop further evidence. He has also further undertaken that on the very same day, he will file the written arguments. That is also recorded. On the basis of the above submission, the Civil Revision Petition is allowed. The cross examination of the witnesses and the filing of the written arguments will be done on 06.06.2019, when the matter is next posted.

8 In the result, the Civil Revision Petition stands allowed and order passed in I.A.No. 101 of 2019 in O.S.No. 47 of

2017, by the Principal District Court, Tiruppur, dated 12.03.2019, is set aside. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

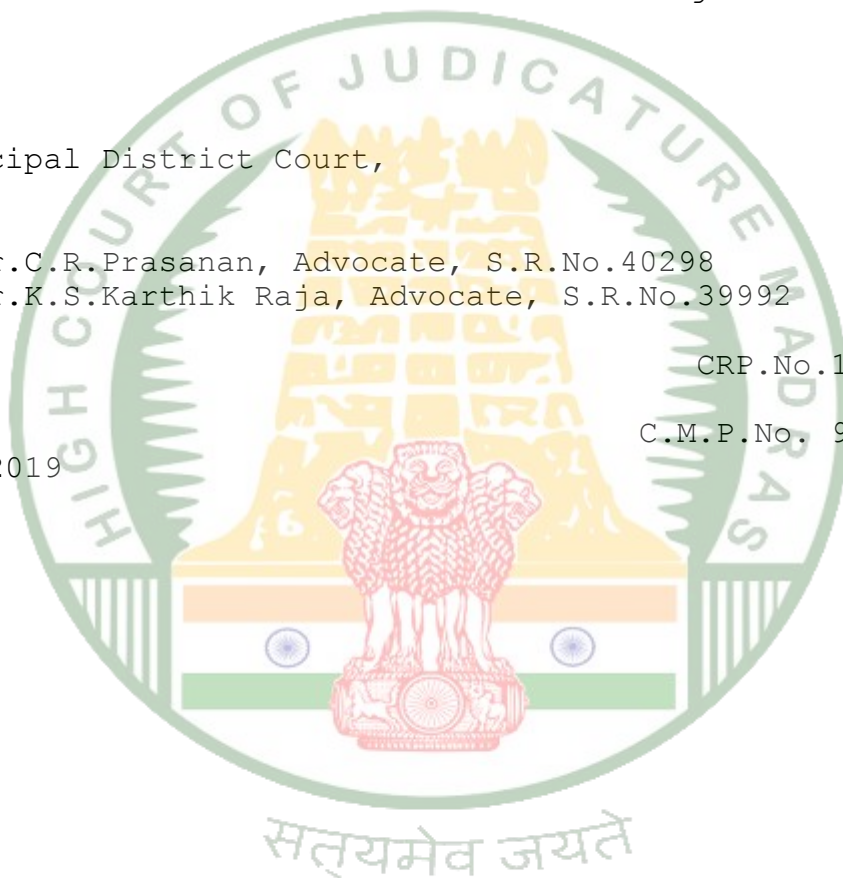
The Principal District Court,
Tiruppur.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.40298

+1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.39992

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CS/30/04/2019



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