

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	18.03.2019
Pronounced On	26.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

**C.R.P.(PD).Nos.4227, 4228, 4229 & 4230 of 2014
and
M.P.No.1,1,1 & 1 of 2014**

M.Palaniappam

... Petitioner in
both C.R.Ps.

Vs.

V.Kavitha

... Respondent in
C.R.P.(PD).No.4227 &
4228 of 2014

P.Kamalam

... Respondent in
C.R.P.(PD).No.4229 &
4230 of 2014

Prayer in C.R.P.(PD).No.4227 & 4228 of 2014: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order dated 11.06.2014 of the Subordinate Judge, Namakkal in I.A.Nos.636 & 637 of 2013 in O.S.No.69 of 2007.

Prayer in C.R.P.(PD).No.4227 & 4228 of 2014: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order dated 11.06.2014 of the Subordinate Judge, Namakkal in I.A.Nos.638 & 639 of 2013 in O.S.No.76 of 2006.

For Petitioner : Mr.K.Bijai Sundar in both C.R.Ps.

For Respondent : Mr.M.Manokaran in both C.R.Ps.

ORDER

By this common order all the four civil revision petitions are being disposed.

2.C.R.P.Nos.4227 & 4228 of 2014 arise out of fair and decretal order passed in I.A Nos.636 & 637 of 2013 in O.S No.69 of 2007 passed by the Subordinate Court, Nammakal.

3.C.R.P.Nos.4229 and 4230 of 2014 arise out of fair and decretal order passed in I.A.No.638 and 639 of 2013 in O.S.No.76 of 2006 passed by the Subordinate Court, Nammakal.

4.All these applications were filed by the petitioner who was the sole defendant in the respective suits. The respective suits have been filed against the petitioner by two different plaintiff's based on two different promissory notes dated 05.07.2005 and 14.01.2004 to recover an amount of Rs. 1 lakh with interest thereon.

5. At the threshold of commencement of the trial, after filing written statements, the petitioner filed the two applications seeking leave in the respective suits for filing additional written statement and for sending the respective promissory notes for examination to **Nasik Mint Factory** to determine the correct date of printing of the stamp affixed on the respective promissory notes based on which the respective suits were filed against the petitioner.

6. The Subordinate Court has rejected these applications vide the impugned fair and decretal orders. It is against these orders the present Civil Revision Petitions have been filed.

7. In the written statements that were originally filed by the petitioner in the respective suits, the petitioner denied the execution of the respective promissory notes in favour of the respective respondents/plaintiffs and even if it was executed it was submitted that these promissory notes may have been signed in respect of prior transactions carried with the husband's of the respective respondent/plaintiff on an earlier occasion for poultry business which was discharged but however on account of personal animosity due to the loss sustained in the said business, the promissory notes

have been filled up to make an unjust demand against the petitioner as if the petitioner had borrowed money from the respondent in two suits.

8.The respective I.A's were filed after a lapse of seven years of the written statements filed and a diametrically opposite stand has been taken by the petitioner in the additional written statements that the promissory note were indeed forged and that there were material alteration as to the date in the respective promissory notes as the printed words "19" was scored off with the years 2004 and 2005. These applications were filed after the defendants engaged a new counsel.

9.Elaborate submissions were made in support of the respective civil revision petitions.

10.Before proceeding further, the respective Civil Revision Petitions viz in C.R.P.Nos.4228 of 2014 and 4230 of 2014 are taken up. They have been filed against fair and decretal order in I.A.No.637 of 2013 in O.S.No.69 of 2007 and I.A.No.639 of 2013 in O.S.No.76 of 2006 to ascertain the age of the stamp affixed on

the respective promissory notes and the date of printing of the stamps. They are being disposed in the light of the decision of this Court in **R Jagadeesan versus N Ayyasami And Another**. 2010 (1) CTC 424.

11.The court there concluded that the exercise carried out by the courts in the State to send the disputed documents for the opinion of the forensic department was as futile exercise the opinions are not accurate. The court further observed that the entire exercise is on a false assumption that there are experts to offer opinion regarding the age of documents in view of the statement given by an expert from the Forensic Science Department, Government of Tamil Nadu, Chennai who was present while passing the order.

12.It was further mentioned that the said order has been affirmed by the Hon'ble Supreme Court.

13.Further, value of the suit being a meagre sum of being Rs.1 lakh each and interest thereon hardly justifies expenses to be defrayed for carrying out such exercise by appointing an advocate

commissioner to carry the respective promissory notes in person and to go all the way to Nasik and have the same examined by at the Nasik Mint Factory, Maharashtra. Consequently, there is no justification in allowing these Civil Revision Petitions.

14. Therefore, orders passed in the respective suits in I.A.No.637 of 2013 in O.S.No.69 of 2007 and I.A.No.639 of 2013 in O.S.No.76 of 2006 are affirmed and require no further interference. Consequently, C.R.P.No.4228 of 2014 and C.R.P.No.4230 of 2014 are liable to be dismissed.

15. As far as the other C.R.P.Nos.4227 and 4229 of 2014 are concerned elaborate submissions were made by the learned counsels for both the parties.

16. It is noticed that the petitioner has taken a mutually destructive stand in the written statement and in additional statement that was sought to file with leave of the Court which has disallowed.

17.The learned counsel for the petitioner drew attention to the decision of this Court rendered in **Muthusamy vs Thangaraj** (2005) 4 MLJ 119 wherein while dealing with scope of Order 8 Rule 9 of C.P.C, it was held that the Court has to be liberally while passing orders under the aforesaid proviso.

18.The Court there also drew distinction between an application for amendment under Order 6 Rule 17 of C.P.C and a proposal to file an additional written statement under Order 8 Rule 9 of C.P.C.

19.The Court held that Order 8 Rule 9 of C.P.C., does not say that no application for receiving the additional statement shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial, as provided under Order 6 Rule 17 of C.P.C.

20.The Court held that when C.P.C was amended, the legislators thought it fit not to allow the party to have amendment, as a matter of right, that too in a case where they had an

opportunity to raise the same, at the time of filing the pleadings. But, when they come to Order 8 Rule 9 of C.P.C., no such restriction has been imposed, thereby giving discretion to the Court concerned to allow the subsequent pleadings, for which it is not necessary to consider whether that defence was available on the date of filing of the original written statement or not.

21. Under Order 8 Rule 9 of C.P.C., power is given to the Court to call for the written statement or additional written statement from any party, fixing time, not exceeding 30 days, thereby showing the provisions of Order 8 Rule 9 of C.P.C., is liberal in its application, giving wide discretion to the Court, probably to give a fair chance to the parties, to agitate their right even raising subsequent pleas, for which, the Court should not be rigid. The Courts should exercise their discretion liberally, when it will not affect the right of the party.

22. Per contra, the learned counsel for the respondent referred to the decision of this Court in **Ilayaperumal vs Madras Cements** 2013 (13) MWN (Civil) 94 wherein it was held that the order of the lower court allowing Amendment to the written statement was not correct.

23.The said decision referred to the decision rendered in **Baldev Singh vs Manoj Singh** (2006) 6 SCC 498 referred to *supra* and several other decisions rendered on the subject wherein it was held that though a defendant is entitled to take an alternative, such plea cannot be mutually destructive of each other.

24.The decision of this Court rendered in **Ilayaperumal Versus Madras Cements** *supra* was referred to in **Kalliammal versus P Marimuthu** 2009 (3) MLJ 654. The said decision though rendered in the context of Order 8 Rule 9 of CPC , followed the decision of the Hon'ble Supreme Court in **Gautam Sarup versus Leela Jetlay** (2008) 3 CLT 186. The Hon'ble Supreme Court there ultimately concluded that categorical admission cannot be resiled but in a given case, it can be explained or clarified. It may be that the defendant is entitled to take an alternative the plea however cannot be mutually destructive of each other.

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25.In my view, the decision rendered in **Ilayaperumal Versus Madras Cements** *supra* is not relevant to the present case.

26. There, after filing a written statement the defendant filed an application seeking to amend the written statement and prayed for adding the word "denied" in paragraph 3 instead of the word "admitted" and further prayed for striking out the entire paragraph 4 and to add another paragraph to the effect that the first defendant in whose name the Patta for the entire suit item stands had been sold in favour of the second defendant under separate sale deed. The said decision this is not applicable to the facts of the present case as the said decision does not deal with Order 8 Rule 9 of CPC. The application filed by the petitioner in this case was under Order 8 Rule 9 of CPC and not under Order 6 Rule 17 of the CPC. Therefore, the decisions cited do not further the case of the respondent to sustain the impugned order.

27. The decision of this court in **Kalliammal versus P Marimuthu** though rendered in the context of Order 8 Rule 9 of CPC, is based on the decision of the Honourable Supreme Court in **Gautam Sarup versus Leela Jetlay** referred the said supra. Again, the said decision of the Honourable Supreme Court was rendered in the context of Order 6 Rule 17 of the CPC. This Court in

Kalliammal case held that the petitioner therein was not entitled to take a destructive plea by filing an additional written statement.

28. Similarly, **Baldev Singh versus Manoj Singh** referred to supra is also of no relevance as it was rendered in the context of Order 6 Rule 17 of CPC.

29. Rest of the decisions cited deal with the merits of the defence particularly in the context of the Indian Evidence Act, 1872, the Negotiable Instruments Act, 1881. Therefore, I do not wish to comment on the same as that would influence the court below.

30. In the present case, at best there would have been two written statements if the application was allowed. Based on the averments it is quite possible to discern that mutually destructive plea has been taken by the petitioner in the respective suits.

31. However, the petitioner has not sought to substitute one with another or amend the written statement. Therefore, it would be open for the court to draw appropriate conclusions on merits based

on different versions of defences offered by the petitioner in his defence before the court.

32. Therefore, it would be premature to decide the merit based on the averments in the proposed additional written statement. Whether the additional written statement would come in the way of the respondent succeeding in the suit cannot be decided at the interlocutory stage. Consequently, I am of the view that the rejection of the application seeking leave of the court requires interference.

33. Consequently, C.R.P.Nos.4227 and 4229 of 2014 deserves to be allowed. However, since these application itself came to be filed at a belated stage, the respondent/plaintiff in each of the suits deserve to be compensation and therefore I am also inclined to award cost while allowing there two C.P.Rs.

34. In fine,

- i. C.P.P.Nos.4228 and 4230 of 2014 stand dismissed. No costs. Consequently

connected Miscellaneous Petitions are closed.

ii. The impugned order passed in I.A.Nos.636 and 638 of 2014 in O.S.No.69 of 2007 and O.S.No.76 of 2006 on the file of the Subordinate Judge, Namakkal are hereby set aside; and C.P.P.Nos.4227 and 4229 of 2014 are allowed subject to payment of cost of Rs.5,000/-.

iii. The Petitioner is directed to pay a sum of Rs.5,000/- (in each of the suits) to the respondent within a period of four weeks from the date of receipt of a copy of this order.

iv. The respondents are at liberty to file their reply.

v. The learned Subordinate Judge, Namakkal is also directed to complete the proceedings and dispose the O.S.No.69 of 2007 and O.S.No.76 of 2006 within a period of six months from the date of receipt of a copy of this order.

vi. These Civil Revision Petitions stand allowed with above observations. Consequently connected Miscellaneous Petitions are closed.

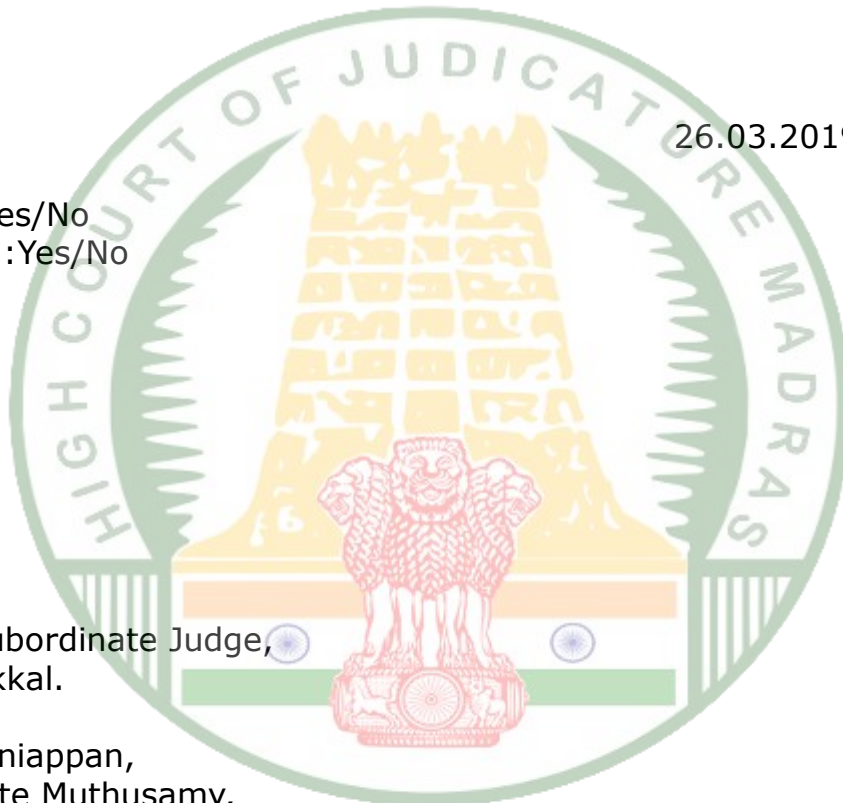
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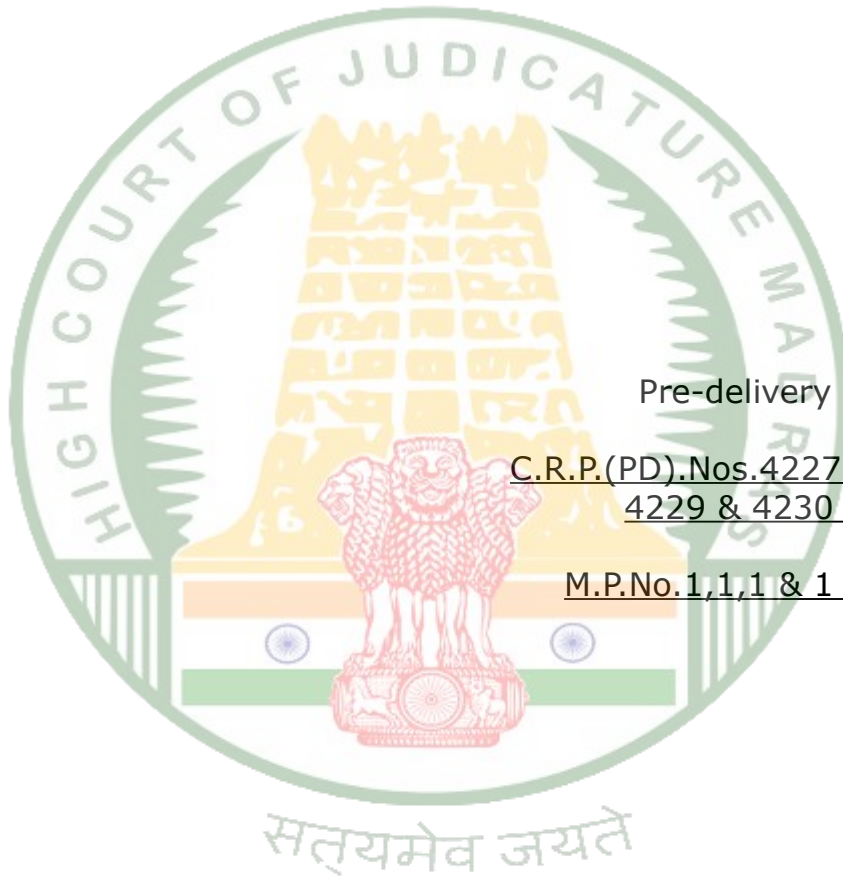
- 1.The Subordinate Judge,
Namakkal.
- 2.M.Palaniappan,
S/o.Late Muthusamy,
Peramandampalayam,
Vazhavandhi Post,
Paramathi Velur Taluk.
Namakkal District.
- 3.The Section Officer, V.R.Section,
High Court, Madras.



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C.SARAVANAN, J.

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Pre-delivery order in

C.R.P.(PD).Nos.4227, 4228,
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M.P.No.1,1,1 & 1 of 2014

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