

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.No.3759 of 2019 and
C.M.P.No.24715 of 2019

M/s.Dobro Toyota
A Division of Doshi Motors Pvt. Ltd.,
No.3-6-327 & 328,
Dhoshi Chambers, Basheer Bhag,
Hyderabad - 500 029. Petitioner/1st Defendant
Vs.

1.Sundaram Finance Limited,
No.21, Pattulos Road,
Chennai - 600 002.
2.M/s.Mohammed Ameen Haji
3.Nipesh Jawaharbhair Panchal Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed in I.A.No.14314 of 2018 in O.S.No.1890 of 2011 by the 1st Assistant City Civil Court Judge, Chennai on 13.08.2019.

For Petitioner : Mr.S.Raveekumar

ORDER

This revision petition has been filed against the fair and decretal order made in I.A.No.14314 of 2018 in O.S.No.1890 of 2011 on the file of the 1st Assistant Judge, City Civil Court, Chennai, by order dated 13.08.2019.

2.Before the trial Court, the revision petitioner was one of the defendant, who filed this application to eschew the evidence of P.W.1, who has already been examined and the plaintiff's evidence also was closed.

3.Since the said application having been rejected through the impugned order, aggrieved over the same, the present revision has been filed by the 1st defendant.

4.Heard Mr.S.Raveekumar, learned counsel appearing for the revision petitioner, who would submit that, the P.W.1 was the employee of the plaintiff, in that capacity, he deposed before

the Court as P.W.1 and thereafter, he was cross examined by other defendants, but that chance was not given to this defendant. Thereafter, the plaintiff's evidence was closed and subsequently, when reopening petition was filed by the other defendants for further cross examination, that was allowed on cost and in that circumstances, the plaintiff informed to the Court that, P.W.1 already left the job and therefore, he cannot be produced by the plaintiff as his witness to further cross examine. Therefore, in that circumstances, whatever evidence adduced by P.W.1 has to be eschewed. For that purpose, when this application was filed, the same was not considered properly and was rejected by the Court below and therefore, the said impugned order is liable to be interfered with.

5.I have considered the said submission made by the revision petitioner and I have perused the materials placed before this Court.

6.It is not in dispute that the P.W.1 has already been examined and he has deposed before the Court below, thereafter even though chance was given to cross examine, that could not be utilised by the defendants, especially the present defendant/revision petitioner and thereafter, it seems that, the petition had been filed to reopen and though the petition was allowed at that time or in the meanwhile, since the P.W.1 was already left the job at the plaintiff Company, it seems that, the plaintiff Company has expressed its inability to produce the P.W.1 once again for cross examination.

7.Because of this reason, the 1st defendant filed the present application to eschew the evidence. In what circumstances, an evidence which has been recorded to be eschewed has been dealt with and in this regard, the trial Court has got power to eschew or not to eschew the evidence already recorded.

8.Moreover, if the P.W.1 is not able to be produced by the plaintiff as his employee, since he is no more employee of the plaintiff company, independently it is open to the parties i.e., the 1st defendant/revision petitioner herein to take out appropriate application in his personal capacity of P.W.1 to be cross examined. Instead of resorting to that method, since the 1st defendant/revision petitioner has filed the present application to eschew the evidence already recorded from P.W.1, the same has been properly considered and was rejected by the trial Court of course rightly. Therefore, this Court feels that, the said order does not require any interference from this Court.

9.In that view of the matter, this civil revision petition fails and hence, it is dismissed. However, it is open to the revision petitioner/1st defendant to seek the residential address

as available in the office of the plaintiff and once such request is made, the same can be divulged by the plaintiff and after getting such address, it is open to the revision petitioner/plaintiff to take appropriate application in the manner known to law.

10.With this observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar (CCC)

/True Copy/

Sub Assistant Registrar

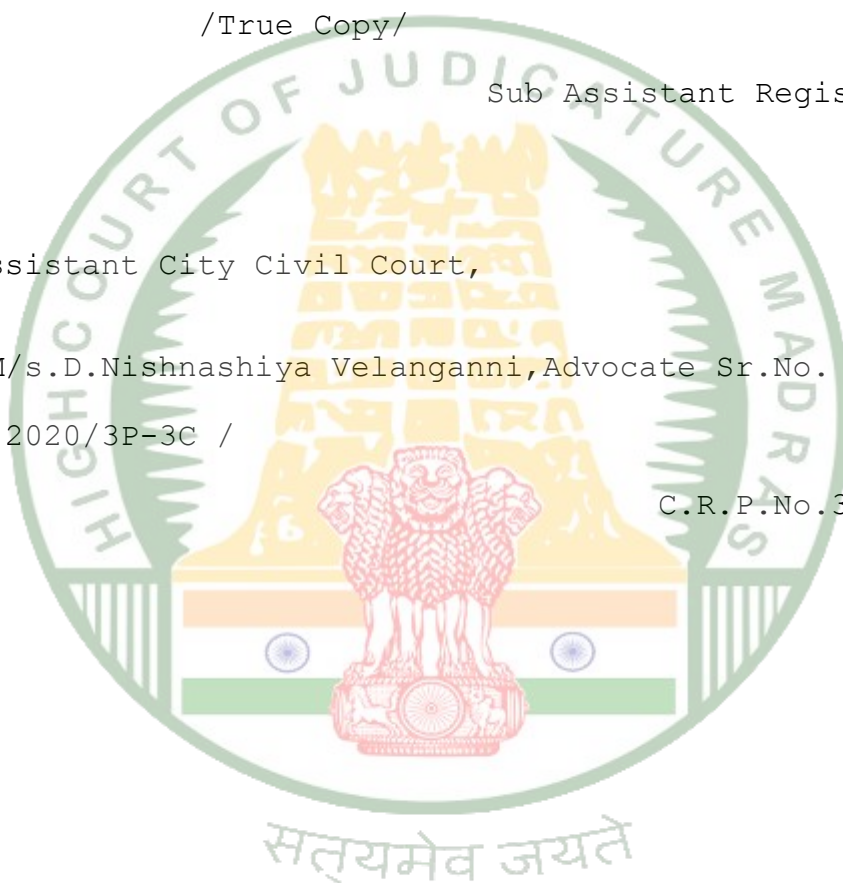
To

The 1st Assistant City Civil Court,
Chennai.

+1 cc to M/s.D.Nishnashiya Velanganni, Advocate Sr.No. 97753

AKM/12.03.2020/3P-3C /

C.R.P.No.3759 of 2019



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