



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

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THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(PD) (MD)No.1219 of 2010

and

M.P.(MD)No.1 of 2010

The Divisional Manager,
New Assurance Company Ltd.,
Dindigul.

: Petitioner/Petitioner/2nd Respondent

.. Vs ..

1.M.Suresh

2.Thavapandian

: Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order 15.04.2010 made in I.A.No.50 of 2010 in M.C.O.P.No.1459 of 2003 on the file the Additional District & Sessions Court (FTC No.III), Madurai.

For Petitioner

: Mr.B.Vijay Karthikeyan

For Respondents

: Mr.S.Natesh Raja for R1

Mr.D.Gandhi Raj for R2

ORDER

The second respondent in M.C.O.P.No.1459 of 2003 on the file of the Fast Track Court No.III, Madurai, is the appellant before this Court.

2.The first respondent in this Civil Revision Petition preferred a claim petition in M.C.O.P.No.1459 of 2003 on the file of the Fast Track Court No.III, Madurai under Section 140 and 166 of Motor Vehicles Act read with Section 3(1) of the Motor Accident Claims Tribunal Rules. In the claim petition, the registration number and type of the vehicle involved in the accident was mentioned as motorcycle (TVS Suzuki) bearing Registration No.TN 59 R 2243. The second vehicle is referred to as a JCB with Registration No.PY-01-J-9407 and one Thavapandian is shown as the owner of the vehicle. For the injury suffered by the first respondent, the first respondent claimed a sum of Rs.3,00,000/- by way of compensation. Originally the M.C.O.P.No.1459 of 2003 was filed only against the



respondent. This was explained later that the claimant did not know that the vehicle involved in the accident was insured with the revision petitioner. After impleading revision petitioner, the petition was opposed by the revision petitioner. In the statement of objection filed by the revision petitioner, there was no denial about the involvement of the vehicle insured with the revision petitioner. In other words, it is not the case of the revision petitioner that the vehicle bearing registration No.Py-01-J-9407 was not involved in the accident. It is the specific case of the revision petitioner that the driver of the JCB which caused the accident was driving the same in a normal speed and by observing traffic rules and that the accident was purely due to the negligence of the claimant. The owner of the vehicle also filed a counter admitting the accident and the involvement of the JCB that was insured with the revision petitioner. It is not in dispute that the revision petitioner filed a petition to receive additional counter in I.A.No.50 of 2010 after closure of claimant's side evidence. The additional counter does not speak about any collusion between the owner of the vehicle and the claimant. In the additional statement, the revision petitioner has stated that the JCB bearing registration No.PY-01-J-9407 was not at all involved in the accident. It is not the case of the revision petitioner that some other vehicle which caused the accident was not brought to the notice purposely or that the involvement of vehicle belonged to the second respondent is an outcome of fraudulent collusion. The only point that was urged in the additional statement of objection is that the criminal case based on the original FIR was closed on account of the fact that the police officials had not filed the charge sheet within time. In such circumstances, this Court is unable to find any error of jurisdiction or irregularity in the order passed by the lower Court dismissing the petition filed by the revision petitioner in I.A.No.50 of 2010.

3.It is admitted before this Court that by order dated 15.07.2010, this Court granted interim stay of all further proceedings. It is stated that a memo dated 04.08.2010 was filed by the revision petitioner before the lower Court pointing out that the revision petitioner has filed a Civil Revision Petition in C.R.P. (MD)No.1219 of 2010 before this Court and this Court has granted an order restraining the lower Court from passing final order. An adjournment was also sought for. The fact that such a memo was filed before the lower Court is demonstrated before this Court as the Court itself has made an acknowledgment of this memo by affixing the seal dated 30.08.2010. The affixture of seal gives a clear indication that memo was received by the lower Court. However, in utter disregard to the order of stay granted by this Court, the lower Court passed an order on 03.07.2013. It is, therefore, the learned Counsel appearing for the revision petitioner stated that the order passed by the lower Court on 03.07.2013 is a nullity and



the revision petition should be allowed. The law is well settled. When the lower Court has passed an order in violation of any order granted by this Court, this Court has inherent power to set the wrong right by the restoring *status quo ante*. A Full Bench of this Court in a judgement reported in ***Century Flour Mills Ltd., v. S. Suppiah and others*** reported in ***AIR 1975 Mad 270*** has held as follows:

"9. In our opinion, the inherent powers of this court under Section 151 C.P.C. are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to so to that extent as we hold that the power is available under Section 151. C.P.C."

4. Though this Court has granted stay, ignoring the order of stay granted by this Court, the lower Court proceeded with the case and passed an award. If the civil revision petition is allowed, this Court would have given further directions rendering the award of lower Court ineffective by virtue of interim order granted by this Court in the above civil revision petition. Since this Court has confirmed the order of lower Court dismissing the petition filed by the revision petitioner to receive additional counter no prejudice is caused to the revision petitioner, because of the disposal of the proceedings by the lower Court. In such circumstances, this Court has no other option but to dismiss the petition for want of merits. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl. Side)

/TRUE COPY/

Sub Assistant Registrar



To

The Additional District & Sessions Court (FTC No.III),
Madurai.

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+1 CC to M/s.B.S.G.FIRM, Advocate (SR-81378[F] dated 13/08/2019)

C.R.P (PD) (MD)No.1219 of 2010

13.08.2019

srm

JM/06.09.2019/4P/3C