



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2018

DELIVERED ON : 17.06.2019

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (PD) (MD) Nos.476 & 477 of 2018
and
C.M.P. (MD) No.2119 of 2018

Victor Balasingh : Petitioner / Respondent /
Plaintiff in both petitions

vs.

David Raja : Respondent / Petitioner /
1st Defendant in both petitions

COMMON PRAYER : Petitions filed under Article 227 of the Constitution of India to set aside the orders passed in I.A.Nos.42 & 43 of 2018 in O.S.No.43 of 2015, respectively, on the file of the District Munsif Court, Sathankulam dated 13.02.2018.

For Petitioner : Mr.M.P.Senthil
For Respondent : Mr.S.R.Anbarasu
(In both petitions)

COMMON ORDER

As the issue involved in both the cases is similar in nature, they are disposed of by way of this common order.

2. These civil revision petitions are directed against the orders passed by the learned District Munsif, Sathankulam, in I.A.Nos.42 & 43 of 2018, respectively, in O.S.No.43 of 2015, dated 13.02.2018, in and by which, the learned District Munsif has allowed the petitions filed by the respondent/defendants seeking to re-open and re-call of P.W.1.

3. Heard the learned Counsel appearing for the respective parties and perused the documents carefully.

4. The facts of the case are that the petitioner herein, as plaintiff, has filed the suit in O.S.No.43 of 2015, before the learned District Munsif, Sathankulam, for the relief of permanent injunction. According to the petitioner, when the suit was at the stage of arguments, the respondent has filed three interlocutory applications in I.A.Nos.42 to 44 of 2018, seeking re-open, re-call of P.W.1 and to receive additional documents.



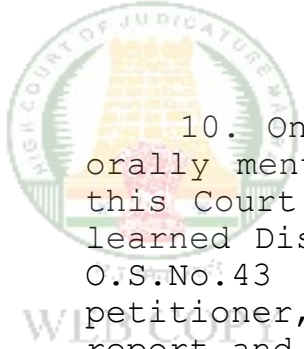
5. The grievance of the petitioner is that though the petitioner had sought time to file counter to the said applications, the learned District Munsif, without providing an opportunity, has, *suo-motu*, allowed the applications on 13.02.2018 and posted the matter for P.W.1's evidence. According to the petitioner, the certified copies of the fair and decreetal order passed in the said interlocutory applications were yet to be issued, so as to prefer revisions before this Court and therefore, the petitioner, narrating all the facts, has filed an interlocutory application in I.A.No.58 of 2018, before the learned District Munsif, seeking to stay further proceedings. However, the said application was dismissed on 22.02.2018 and the suit was adjourned on day-by-day basis for P.W.1 evidence.

6. According to the petitioner, though several memos were filed before the learned District Munsif seeking further time, stating that the certified copies of the orders made in I.A.Nos.42 to 44 of 2018 were not made ready and were not issued to the petitioner, his request was not considered by the learned District Munsif and on the contrary, the learned District Munsif went on marking the documents, *suo-motu*, in the absence of P.W.1 and posted the suit for judgment on 05.03.2018, stating that P.W.1 called absent; Ex.B1 marked; and arguments heard.

7. At that juncture, the petitioner filed the present revisions challenging the orders passed in I.A.Nos.42 & 43 of 2018 in O.S.No.43 of 2015 dated 13.02.2018, along with C.M.P.(MD)Nos.2037 & 2038 of 2018 before this Court, seeking to dispense with the production of the fair and decreetal orders passed in I.A.Nos.42 & 43 of 2018 and the same were ordered by this Court on 02.03.2018, thereby, the present civil revision petitions were numbered as C.R.P.(MD)Nos.476 & 477 of 2018.

8. When the matter came up for admission on 05.03.2018, this Court, after hearing the learned Counsel for the petitioner, had granted an order of interim stay. According to the learned Counsel for the petitioner, this Court had granted the said interim order around 11.30 a.m., and the same was conveyed to the trial Court Counsel immediately over phone, who, in turn, filed a memo before the learned District Munsif around 11.50 a.m., on the same day. However, the learned District Munsif refused to receive the memo and proceeded to deliver the judgment at 12.50 p.m., dismissing the suit itself.

9. According to the petitioner, the learned District Munsif used to pronounce orders and judgments only in the evening, that too, Counsels could be able to ascertain only from the Court diary. However, in the case on hand, in order to overcome the interim order granted by this Court, the learned District Munsif, in a hurried manner, has delivered the judgment.



10. On 06.03.2018, the learned Counsel for the petitioner, has orally mentioned this development before this Court and therefore, this Court has directed the Registry to call for a report from the learned District Munsif as to why he has pronounced the judgment in O.S.No.43 of 2015, without considering the memo filed by the petitioner, for which, the learned District Munsif has given a report and therefore, the matter was kept pending for orders.

11. In my considered opinion, since the judgment has been passed in the suit itself, the petitioner is at liberty to file appeal against the judgment passed in the suit and the period in which the above revision petition was pending before this Court for orders, shall be excluded by the appellate Court for the purpose of limitation and the petitioner is at liberty to raise all the points before the appellate Court and the appellate Court shall consider the same on merits and in accordance with law.

With the above direction, these Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
The District Munsif,
Sathankulam.

+1 CC to Mr.M.P.SENTHIL, Advocate SR-69352.
+1 CC to Mr.S.R.ANBARASU, Advocate SR-69930.

C.R.P. (PD) (MD) Nos.476 & 477 of 2018
and
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CS: (26/06/2019) 3P 4C