



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.06.2019

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .Nos.915 to 917 of 2019 (PD)

and

C.M.P. (MD) .No.5265 of 2019 in C.R.P. (MD) .No.915 of 2019

Valayapathi

... Petitioner in all these
petitions / Petitioner/
Defendant

Vs.

S.Govindaraj

... Respondent in all these
petitions / Respondent/
Plaintiff

PRAYER:- Civil Revision Petitions have been filed under Article 227 of the Constitution of India, against the orders dated 12.04.2019 passed in I.A.Nos.72 and 73 of 2019 and I.A.No.85 of 2019 in O.S.No.122 of 2014 by the Additional Subordinate Court, Thanjavur.

For petitioner in all
these petitions : Mr.G.Karnan

COMMON ORDER

C.R.P.(MD).Nos.915 and 916 of 2019 have been filed by the petitioner/defendant challenging the common order, dated 12.04.2019, passed in I.A.Nos.72 and 73 of 2019 in O.S.No.122 of 2014, whereby and whereunder the Court below dismissed the applications filed by the petitioner/defendant seeking to reopen the case and to recall PW1 for further cross examination. C.R.P.(MD).No.917 of 2019 has been filed by the petitioner/defendant challenging the order dated 12.04.2019, passed in I.A.No.85 of 2019 in O.S.No.122 of 2014, whereby and whereunder the Court below has dismissed the application filed by the petitioner/defendant seeking to send Ex.A1 to the handwriting expert to get opinion by comparing the word "one" mentioned in the interest column with the other words mentioned in Ex.A1.

2. Since these revision petitions arise out of one suit, these petitions were heard together and now disposed of by way of this common order.

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3. Heard the learned counsel appearing for the petitioner and perused the records carefully.



4. It is seen that the respondent/plaintiff has filed the suit for recovery of money based on a promissory note. After trial and both sides arguments, the trial Court reserved the suit on 13.03.2019 for judgment. While so, the petitioner/defendant filed the applications seeking to reopen and recall PW1 for further cross examination and seeking to send Ex.A1 to the handwriting expert to get opinion by comparing the word "one" mentioned in the interest column with the other words mentioned in Ex.A1.

5. In the decision in **Vadiraj Nagappa Vernek (D) through LRs. VS. Sharad Chand Prabhakar Gogate**, reported in (2009) 4 SCC 410, the Hon'ble Supreme Court has that the power to recall any witness under Order 18 Rule 17 of C.P.C. can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of examination.

6. Admittedly, the petitioner/defendant has not assigned any specific reason in the affidavit filed in support of the applications before the Court below. It is within the discretion of the Trial Court to allow these applications. The Court below has dismissed all the applications considering the stage of the proceedings and also considering the fact of non mentioning of any specific reason in the applications. It is seen that though the petitioner/defendant cross examined the witnesses on the side of the respondent/plaintiff at length, now he has filed the above interim applications before the Court below at the stage of judgment. It gives an impression that in order to fill up the lacunae in the evidence which has already been recorded and in order to drag on the proceedings, he has filed these applications. This Court does not find any reason to interfere with the orders passed by the Court below.

7. In view of the above, these Civil Revision Petitions are dismissed at the stage of admission itself. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

<https://hcservices.ecourts.gov.in/hcservices/>

The Additional Subordinate Judge,
Thanjavur.



+1.CC. To Mr.G.Karnan, Advocate in SR No.70296

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GCG

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