



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P(MD)Nos.787 and 788 of 2017
and
C.M.P(MD)No.3575 of 2017

Vaijayanthimala

.. Petitioner in both CRPs.

Vs.

Arockiyaraj

.. Respondent in both CRPs.

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 23.12.2016 made in I.A.Nos.259 and 260 of 2016 in O.S.No.101 of 2014 by the learned Principal District Judge, Tiruchirappalli.

For petitioner : Mr.K.Chengiz Khan
in both CRPs.

For Respondent : No appearance
in both CRPs.

ORDER

The respondent / plaintiff filed O.S.No.101 of 2014 for the relief of specific performance. The case was posted for cross-examination of P.W.2 on 24.10.2016. Since there was no representation on behalf of the petitioner / 1st defendant, the Court below closed the plaintiff's side evidence and posted the case for defendant's side evidence. Therefore, the petitioner / 1st defendant filed I.A.Nos.259 and 269 of 2016 seeking to reopen the the plaintiff's side evidence and also to recall P.W.2 for cross-examination, respectively. The Court below dismissed both the petitions, against which, the present revision petitions have been filed.

2.The learned counsel for the petitioner would submit that the failure to cross-examine P.W.2 on the particular date is neither wilful nor wanton. The petitioner's counsel could not appear before the Court below, due to his father's illness . Unless P.W.2 is cross-examined, the petitioner will be put to irreparable loss. Hence, he prayed to set aside the orders passed by the Court below.



3.Despite notice being served on the respondent and his name is being printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

4.Heard the learned counsel for the parties and perused the materials available on record.

5.The respondent / plaintiff filed O.S.No.101 of 2014 for the relief of specific performance. The case was posted for cross-examination of P.W.2. Since there was no representation on behalf of the petitioner, the Court below closed the plaintiff's side evidence and posted the case for defendant's side evidence. The reason assigned on the side of the petitioner is that his counsel did not appeared before the Court below on that day for the reason that his father suddenly fell ill.

6.Perusal of records would show that the trial commenced on 24.11.2015. P.W.1 was examined in chief on 27.11.2015 and the case was posted on 07.12.2015 for cross-examination of P.W.1. Since both parties sought to refer the case to the Lok Adalat, the case was adjourned. Thereafter, since the petitioner failed to cross-examine P.W.1, P.W.1's evidence was closed and P.W.2 was examined in chief. Thereafter, on application, the case was reopened and P.W.1 was recalled and cross-examined. On 24.10.2016, there was no representation on the side of the petitioner to cross-examine P.W.2 and therefore, plaintiff's side evidence was closed and the case was posted for defendants' side evidence. The learned Judge found that the petitioner is not vigilant in contesting the case and he is adopting delaying tactics by filing petitions one after another.

7.It is seen that the suit has been filed for the relief of specific performance. The reason assigned on the side of the petitioner is that on the particular date, the petitioner's counsel was not present due to his father's illness. For the negligence on the part of the advocate, the litigant should not suffer. Therefore, the learned Judge ought to have given one more opportunity to the petitioner to cross-examine P.W.2. In view of the above, this Court is inclined to set aside the impugned orders passed in I.A.Nos.259 and 260 of 2016 in O.S.No.101 of 2014 by the Court below. The learned Judge shall re-open the plaintiff's side evidence for cross-examination of P.W.2 and fix a date for cross-examination of P.W.2. If the petitioner fails to cross-examine P.W.2 on that particular date, the civil revision petitions will stand automatically dismissed and the orders passed by the learned Judge in I.A.Nos.259 and 260 of 2016 in O.S.No.101 of 2014 will stand automatically restored.



8. The Civil Revision Petitions are allowed on the above terms. No costs. Consequently, connected miscellaneous petition is also closed.

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// True Copy //

Sd/-

Assistant Registrar (AD-I)

Sub Assistant Registrar (CS)

smn

To

1. The Principal District Judge,
Tiruchirappalli.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.G.Prabhu Rajadurai, ADVOCATE IN SR No.68759

**COMMON ORDER MADE IN
C.R.P (MD) Nos.787 and 788 of 2017
and
C.M.P (MD) No.3575 of 2017**

13.06.2019

KS (26.06.2019) 3 P 5 C