



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 08.11.2019

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 113 OF 2019

AND

CRL. M.P. (MD) NO. 1994 OF 2019

Radhabai

.. Petitioner

- Vs -

Ganesan

.. Respondent

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 09.01.2019, passed by the learned Prl. District Judge, Tiruchirappalli, in Crl. M.P. No.2985 of 2018 in C.A. No.66/2017.

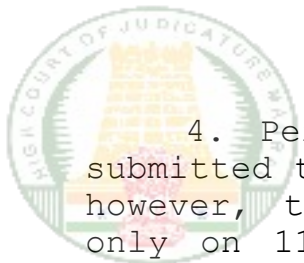
For Petitioner : Mr. S.Deenadayalan
For Respondents : Mr. N.Sathish Babu

ORDER

The present revision has been filed against the dismissal of the miscellaneous petition filed u/s 391 Cr.P.C. to adduce additional evidence.

2. It is the case of the petitioner herein that he moved a miscellaneous petition before the court below to adduce additional evidence on the ground that the certified copy of the judgment in O.S. No.845/2002, which was filed by the respondent, though marked as exhibit, but the petitioner herein, who is the appellant/accused before the court below, has not been examined, which will put the appellant to great loss and hardship. However, the trial court, without appreciating the said fact, has dismissed the petition for adducing additional evidence and, therefore, the said order is liable to be interfered with.

3. Learned counsel appearing for the petitioner reiterated the submissions as advanced before the court below and as also enumerated in the grounds of revision and prayed that non-allowing of this revision would cause irreparable loss and hardship to the petitioner and, therefore, prayed for setting aside the order passed by the court below.



4. Per contra, learned counsel appearing for the respondent submitted that though the suit was dismissed as early as on 16.3.18, however, the application to adduce additional evidence was filed only on 11.7.18, after a lapse of four months and the delay in filing the petition itself clearly shows that it is nothing but a tool to prolong the proceedings, which fact has been appreciated by the court below in dismissing the petition. Therefore, it is submitted that no interference is called for with the order passed by the court below.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record as also the impugned order passed by the court below.

6. It is not in dispute that the judgment in the suit was passed on 16.3.18, while the application for adducing additional evidence has been filed on 11.7.18. There is a delay, which is visible, but the delay, as shown above, cannot alone be the ground to dismiss the application for adducing additional evidence unless and until it is shown that it is for the purpose of prolonging the litigation. The delay is not so very enormous to hold that the petition has been filed for prolonging the litigation. Further, the reason adduced by the trial court stating that the dismissal of the petition at this stage would not be prejudicial since the appellate proceedings against the judgment in the suit has not come to an end, cannot be said to be a proper reason to dismiss the petition. The appellate remedy is a right and that right cannot be put to the prejudice of the petitioner and stop the petitioner from adducing evidence.

7. On an overall conspectus of the issue, this Court is of the considered opinion that the court below has erred in dismissing the petition, which warrants interference at the hands of this court, for the reasons aforesaid.

8. Accordingly, this revision petition is allowed and the petitioner herein is permitted to mark the document as sought for in Cr. M.P. No.2985/2018 in C.A. No.66/2017. On marking of the said document, the court below is directed to take up the matter on board and dispose of the appeal within a period of two months. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To மேலும் உரிமை

The Principal District Judge
Tiruchirappalli.

+1 CC to Mr.R.VIJYA KUMAR, Advocate (SR-97036[F] dated 08/11/2019)

+1 CC to Mr.N.SATHISH BABU, Advocate (SR-97356[F] dated
11/11/2019)

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