



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P. (PD) (MD) No.1166 of 2019

and

C.M.P (MD) No.6293 of 2019

S.Shanthi

... Petitioner

Vs.

1.J.Vincent

2.V.Chandra

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 06.03.2019 made in I.A.No.01 of 2019 in O.S.No.19 of 2014 on the file of the 3rd Additional District and Sessions Judge, Tiruchirapalli.

For Petitioner : Mr.V.Karuna

ORDER

This Civil Revision Petition has been filed to set aside the order dated 06.03.2019 made in I.A.No.01 of 2019 in O.S.No.19 of 2014 on the file of the Third Additional District and Sessions Judge, Tiruchirapalli.

2.The petitioner is the plaintiff in O.S.No.19 of 2014 on the file of the Third Additional District and Sessions Judge, Tiruchirapalli. During the pendency of the trial in the said suit, he filed a petition in I.A.No.01 of 2019 under Section 151 C.P.C., to summon the new branch manager attached to Indian Bank, who assumed charge to depose evidence. On 6th March 2019, the said application filed by the petitioner/plaintiff was dismissed by the Third Additional District and Sessions Judge, Tiruchirapalli, after affording opportunity to the defendants. Now, against the said dismissal order, the petitioner is before this Court and prayed to set aside the order dated 06.03.2019.

3.In this regard, the learned counsel appearing for the petitioner would contend that during the time of trial on the side of the defendants the Bank Manager has been examined as D.W.2 and he has cross examined on the side of the plaintiff. In the said circumstances, at the time when the plaintiff wanted to further



cross examination of D.W.2, the said Manager was died. Only in the said circumstances, the petitioner filed the application for eschewing the said evidence and the same was dismissed.

4. Now on considering the submission made by the learned counsel for the petitioner, it is to be noted that already our Hon'ble Apex Court in the judgment reported in **AIR 1925 Madras 497** in a case of **Maharaja of Kohapur Vs. Sundram Iyer** and this Court in the judgment reported in **2001 (8) Supreme 574** in a case of **Satnam Singh and others Vs. Sadhu singh and others**, have held that once the evidence recorded cannot be eschewed. Further, it is specifically stated that the evidence of a dead person, would be admissible. So, in the said circumstances, the learned Third Additional District and Sessions Judge, Tiruchirapalli, has also followed the said principle and dismissed the application. More than that, after recording the cross examination of the particular witness, seeking to eschew the evidence given by the witness, is not at all maintainable.

5. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Third Additional District and Sessions Judge,
Tiruchirapalli.

+1 CC to Mr.V.KARUNA, Advocate SR-77438.

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