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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.08.2019

DELIEVRED ON : 18.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) Nos.263 and 264 of 2018 (PD)

and

CMP (MD) .Nos.1160 and 1161 of 2018

C.R.P. (MD) .No.263 of 2018 :

Tom Edwin Louis
S/o.A.M.Amala Xavier,
represented through his
Power Agent namely
A.M.Amala Xavier

.. Petitioner/
1st respondent / 1st respondent /

Vs.

1.M.Chockalingam

... 1st respondent/
Petitioner / Appellant

2.K.Mohanraj

... 2nd respondent /
2nd respondent/ 2nd respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., praying to set aside the order dated 17.11.2017 passed in I.A.No.21 of 2017 in A.S.No.11 of 2015 by the Principal District Court, Pudukkottai.

For Petitioner	:	Mr.C.Vakeeswaran
For 1 st respondent	:	Mr.K.N.Govarthanan
For 2 nd respondent	:	M/s.Chamundi Bose

C.R.P. (MD) .No.264 of 2018 :

Leo Felix Louis

.. Petitioner/
1st respondent / 1st respondent /

Vs.



1.M.Chockalingam

... 1st respondent/
Petitioner / Appellant

2.K.Mohanraj

... 2nd respondent /
2nd respondent/ 2nd respondent

WEB COPY

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., praying to set aside the order dated 17.11.2017 passed in I.A.No.15 of 2017 in A.S.No.5 of 2016 by the Principal District Court, Pudukkottai.

For Petitioner	:	Mr.C.Vakeeswaran
For 1 st respondent	:	Mr.K.N.Govarthanan
For 2 nd respondent	:	M/s.Chamundi Bose

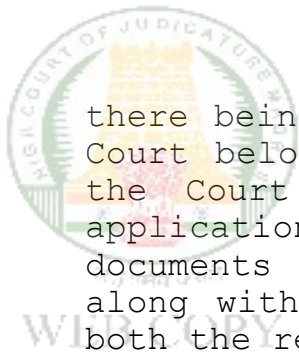
COMMON ORDER

These Civil Revision Petitions have been filed by the revision petitioner / 1st respondent, challenging the orders dated 17.11.2017 passed by the first appellate Court in I.A.Nos.21 and 15 of 2017 in A.S.No.11 of 2015 and 5 of 2016 respectively, whereby and whereunder the Court below allowed the applications for reception of additional documents.

2. Since the issue involved in both the petitions are interrelated to each other, both the petitions were heard together and are being disposed of by way of this common order.

3. The petitioners herein have filed the suit in O.S.Nos.107 and 106 of 2007 respectively for the relief of specific performance as against the 1st respondent herein. The said suits were decreed on 24.11.2014. As against the same, the first respondent herein filed appeal suits in A.S.Nos.11 of 2015 and 5 of 2016 before the first appellate Court. During the pendency of the said appeals, the first respondent herein filed I.A.Nos.21 of 2017 and 15 of 2017 for reception of additional documents. The said applications were allowed by the first appellate Court holding that in order to avoid multiplicity of proceedings and to give fair opportunity to the first respondent/appellant and in the interest of justice, these petitions have to be allowed. Questioning the said orders, the petitioners have filed these revision petitions.

4. The learned counsel for the petitioners submitted that the petitions filed by the petitioners seeking permission to file additional written statement was dismissed by the Court below and the same was confirmed by this Court in the Civil Revision Petitions. The first respondent herein suppressed the above factum in the affidavit filed in support of the petitions and therefore, the applications for reception of additional documents ought to have been dismissed by the first appellate Court. He would further submit that the first respondent wanted to adduce evidence without



there being any pleadings and therefore, the orders passed by the Court below is liable to be set aside. He would next submit that the Court below has not recorded any reason for allowing the applications and that the applications for reception of additional documents ought to have been decided by the first appellate Court along with appeal and not individually. Thus, he prayed to allow both the revision petitions.

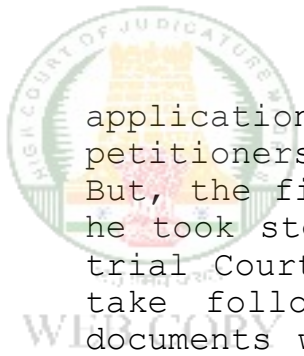
5. The learned counsel appearing for the first respondent in both the petitions submitted that the applications for filing additional written statement was rejected by the trial Court only on the ground that the applications have been filed belatedly and not on merits. Only after filing of the appeals, the first respondent came to know that no document was marked on his side before the trial Court. The petitions filed by the counsel for the first respondent before the trial Court for reception of documents were returned pointing out certain defects and it was, thereafter, misplaced in the Advocate's office and hence, no document was marked on his side. He would further submit that considering the above factum and as per the decision of this Court in **N.Ravi and others Vs. S.K.Thirunavukkarasu (died) and others**, reported in **2015 (2) MWN (Civil) 283**, the first appellate Court has rightly allowed the applications for reception of additional documents individually even before deciding the appeal suits. Therefore, the orders passed by the first appellate Court need not be interfered with. Thus, he prayed to dismiss both the revision petitions.

6. The learned counsel appearing for the 2nd respondent reiterated the submissions of the learned counsel for the first respondent.

7. Heard the learned counsel for the petitioners and the first and the second respondents and perused the records carefully.

8. Under Order 41 Rule 27 C.P.C. production of additional documents, whether oral or documentary, can be permitted only under three circumstances. They are (a) the Trial Court had refused to admit the evidence though it ought to have been admitted; (b) the evidence was not available to the party despite exercise of due diligence; and (c) the appellate Court required the additional evidence so as to enable it to pronounce better judgment or for any other substantial cause.

9. Admittedly, it is not the case of the first respondent that most of the documents sought to be marked were not available with him. According to the first respondent, the petitions filed for reception of documents have been returned and it was misplaced in the Advocate's Office and due to the fault of his counsel in the trial Court, the documents sought to be marked could not be filed before the trial Court and the said fact came to his knowledge only after filing the appeals and therefore, he has filed the



applications for reception of documents at the appellate stage. The petitioners herein have strongly objected the above contention. But, the first respondent has not produced any document to show that he took steps to file the documents sought to be marked before the trial Court. More over, it is the duty of the first respondent to take follow up action in the proceedings and to see that the documents were marked. Having failed to do so, he cannot put blame on the counsel. It is seen that the first appeals were filed in the year 2015, but the applications for reception of additional documents were filed in the year 2017. The first respondent has not assigned sufficient reason for the delay in filing such applications even before the first appellate Court.

10. As stated earlier, Order 41 Rule 27 CPC requires that an appellate Court should be satisfied that the additional evidence is required to enable it either to pronounce judgment or for any other substantial cause. But, the first appellate Court had recorded no reasons to show that it had considered the requirements of Order 41 Rule 27 CPC. As it has failed to do so, the orders passed by the first appellate Court cannot be countenanced.

11. Suffice it to say, pleadings form bedrock in a civil suit. Any amount of oral evidence without pleading is of no avail. A perusal of the written statement filed by the first respondent would show that the document sought to be marked has not been referred in the written statement. It is well settled principle that any amount of evidence without pleadings is waste and the same can not be accepted.

12. In the case of **Bachhaj Nahar Vs. Nilima Mandal**, reported in **2008 (17) SCC 491**, the Hon'ble Supreme Court has held that no amount of evidence on a plea that is not put forward in the pleadings can be looked into to grant any relief. Only in exceptional cases, can this general rule be deviated from if the Court is fully satisfied that the pleadings and issues generally gathers the case subsequently put forward and that the parties being conscious of the issue had led evidence on such issue.

13. The Apex Court in the decision in **Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College and Ors.** reported in **1987 AIR 1242**, has observed as under:

"It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state



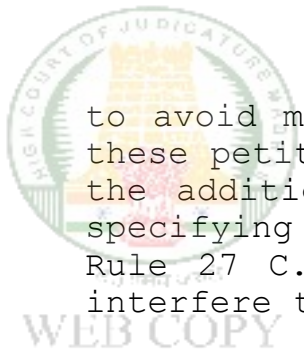
the essential material facts so that other party may not be taken by surprise."

14. Admittedly, through the petitions for filing additional written statement, the first respondent herein had sought to introduce the pleadings relating to some of the additional documents. The trial Court has dismissed the said petition holding that the petition cannot be entertained and that the same has been filed only with a view to drag on the proceeding. When it was challenged by the first respondent before this Court, this Court has held in C.R.P.(MD).Nos.1563 and 1564 of 2014 that by filing the additional written statement, the first respondent/petitioner wanted to withdraw the admissions made in the written statement and further the said applications have been filed after closing of evidence and therefore, at this stage, these petitions cannot be entertained.

15. It is seen the first respondent has not even stated in the applications filed before the first appellate Court about rejection of the petitions for filing additional written statement by the trial Court and confirmation of the same by this Court in C.R.P. (MD).Nos.1563 and 1564 of 2014. It is only the petitioners, who had brought to the notice of the first appellate Court about the same.

16. Though it is stated by the learned counsel for the first respondent that the petitions for filing additional written statement has been dismissed only on the ground of delay, a perusal of the orders passed by the trial Court as well as this Court in the petitions for filing additional written statement and in the revision petitions respectively would show that they were dismissed not only on the ground of delay but also on merits. As no further challenge has been made by the first respondent, it has become final. Thus, the fact remains that absolutely there is no pleadings for the documents to be marked. More over, it is seen that most of the documents sought to be marked are related to before filing of the suit, but, as stated earlier, there is no pleadings in respect of the same in the written statement and even in the additional written statement, which was attempted to be filed. Therefore, the documents sought to be marked cannot be taken into account, as there is no pleadings. The first appellate Court has absolutely failed to consider this aspect.

17. Though the application for additional evidence filed under Order 41 Rule 27 C.P.C. at the appellate stage can be heard together with the appeal, in case of allowing the application for additional evidence, the Appellate Court has to pass separate order in the application indicating the points regarding which the additional evidence is to be adduced. In this case, the first respondent herein filed applications for reception of additional documents without sufficient reason and pleadings, and the first appellate Court also, without assigning any reasons, has allowed the petitions for filing additional documents merely stating that in order



to avoid multiplicity of proceedings and to give fair opportunity, these petitions have to be allowed. Mere statement in the order that the additional evidence is necessary, without record of reason or specifying the points is not a sufficient compliance of Order 41 Rule 27 C.P.C. In view of the above, this Court is inclined to interfere the orders passed by the first appellate Court.

18. In the result, both the Civil Revision Petitions are allowed and the orders passed by the first appellate Court in I.A.Nos.21 and 15 of 2017 in A.S.No.11 of 2015 and 5 of 2016 respectively are set aside and I.A.Nos.21 and 15 of 2017 are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

gcg

To

1.The Principal District Judge,
Pudukkottai.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+2CC TO MR.C.VEEKEESWARAN, Advocate Sr. No. 98930 & 98931

+1CC TO MR.k.n.govardhanan, Advocate Sr. No. 99205

common order made in
C.R.P(MD) Nos.263 and 264 of 2018
18.11.2019

TR(26.11.2019) 6P 7C