

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23..01..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.154 of 2020
and
C.M.P.No.843 of 2020

B.C.Rajendran

... Petitioner

-Versus-

Murugesan (Died)

1.Veilukanthammal
2.Nagalingam
3.Saraswathi
4.Kalaiselvi
5.Udhayakumar
6.Gopal

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 19.10.2029 made in I.A.No.1 of 2019 in O.S.No.3385 of 2007 by the learned VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.G.Appavu

ORDER

This civil revision petition is directed against the order passed by the learned VII Assistant Judge, City Civil Court, Chennai, dismissing the application filed by the petitioner seeking to recall D.W.1 for further cross examination.

2. The petitioner is the defendant in the suit. The suit was originally filed by one K.Murugesan against the petitioner for recovery of money due under a promissory note. Pending suit, the sole plaintiff died and therefore, his legal heirs were brought on records as plaintiffs. According to the petitioner, he had examined one Gopal as D.W.1. Even though the said Gopal had subjected himself for cross examination for some time, thereafter, he did not turn to the court for further cross

examination for nearly 3 years and therefore, the court below had proceeded to close his evidence. Thereafter, the present application came to be filed seeking to recall D.W.1. That application was dismissed by the court below. Challenging the same, the defendant is before this court with the instant revision petition.

3. This revision petition is coming up today for admission. I have heard the learned counsel for the petitioner and also perused the records carefully.

4. D.W.1 is the witness produced and examined by the petitioner. D.W.1 did not appear for more than 3 years for further cross examination and therefore, the court below had closed the evidence of D.W.1. If any witness is not appearing to give evidence, it is the duty of the person, who got him as witness on his side, to secure the attendance of such witness before the court to give evidence in the case in the manner known to law. Without availing such recourse, the petitioner cannot seek to recall the witness whose evidence had already been closed for want of his appearance in court, more particularly, when D.W.1 was not willing to come forward to the court to complete his cross examination. Thus, this court does not find any illegality or irregularity in the order passed by the court below and the revision petition is liable only to be dismissed.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected CMP is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The xVII Assistant Judge,
City Civil Court, Chennai.

+1 cc to Mr.G.Appavu Advocate sr4579

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