

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.2021 of 2018
and CMP No.12019 of 2018

J. William

.. Petitioner

Vs.

Anupam Mishra

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.10.2017 in I.A.No.26 of 2017 in O.S. No.55 of 2017, on the file of Subordinate Judge, Coonoor.

For Petitioner : Mr.R. Subramanian

For Respondent : Mr. Bijesh Thomas
for M/s.K.F.Manavalan

ORDER

This matter is taken up for hearing through Video-Conferencing.

The defendant in OS No.55 of 2017 has come forward with the Civil Revision Petition challenging the order made in IA No.26 of 2017 seeking leave to file Additional Written Statement.

2. The suit is one for specific performance. The defendant filed an original written statement on 10.07.2015. Just before the commencement of trial, the defendant filed IA No.26 of 2017 seeking leave to file additional written statement raising substantially three issues. One relating to the nature of the agreement and the reason for the borrowing made under the agreement and another is regarding the requirement of registration of the agreement. The said application was opposed on the ground that it is belated and that the pleadings in the additional written statement would constitute a new case being put forward by the defendant, just before trial.

3. The learned Subordinate Judge, who heard the application by an unreasoned order, dismissed the application. The learned Subordinate Judge observed that the original written statement is elaborate. The suit being one

for recovery of money and an elaborate written statement having already been filed, there is no need for an additional written statement.

4. I have heard Mr.R.Subramanian, learned counsel appearing for the petitioner in support of the Revision and Mr.Bijesh Thomas, learned counsel appearing for M/s.K.F.Manavalan, for the respondent in opposition.

5. Mr.R.Subramanian, learned counsel appearing for the petitioner would contend that the learned Trial Judge was not right in dismissing the application without going into the reasons assigned or the pleadings set out in the additional written statement. According to him, the learned Subordinate Judge ought to have gone into the pleas raised and tested, as to whether, such pleas could be raised in defence. He has misconstrued the very scope of the suit.

6. Contending contra, Mr.Bijesh Thomas, learned counsel appearing for the respondent would submit that the application is highly belated and it has been filed only with the view to drag on the proceedings. He would also

submit that the additional written statement seeks to raise new pleas which are substantial in nature and it would affect the trial of the suit.

7. I have considered the rival submissions.

8. The suit is one for specific performance. In the original written statement the defendant has taken the plea that he has returned the advance on a particular date by way of a Demand Draft. He has sought leave to file an additional written statement before the trial commenced. In the additional written statement he seeks to raise the defence that the agreement was entered into by him to secure the borrowing made by him for his daughter's wedding and since his daughter wedding was canceled he has repaid the amount borrowed. The requirement of registration of the agreement was also taken as an additional plea in the additional written statement. The contents of the additional written statement would show that it only elaborates and explains the defence set out in the original written statement. No substantially new fact has been pleaded. All it has been done only to make the defence more clearer and also to take a statutory defence

regarding registration.

9. The learned Subordinate Judge did not consider whether the new pleas taken in the additional written statement should be allowed or not. He observed that the suit is one for money and a elaborate written statement has already been filed, therefore the additional written statement cannot be accepted at the belated stage. Admittedly, the additional written statement has been filed before the commencement of trial. Therefore, the plaintiff cannot be said to be prejudiced. The pleadings set out in the additional written statement, in my opinion, are also only in the nature of an explanation offered to the original pleadings. Therefore, I do not see any prejudice being caused to the plaintiff by accepting the additional written statement.

10. In the light of the above, I am convinced with the order of the Trial Court needs to be interfered with, hence the Civil Revision Petition is **allowed**. The order of the Trail Court is set aside and the additional written statement is taken on file. No costs. Consequently, the connected

miscellaneous petition is closed.

11. I am informed that the evidence of P.W.1 is completed and the evidence of the defendant is being recorded. In view of the additional written statement being accepted, it is open to the Trial Court to frame additional issues and reopen the evidence of P.W.1 for further evidence if necessary. It is need less to state that the plaintiff will be entitled to file a reply statement.

04.08.2020

jv

Index: Yes/No

Internet: Yes/No

speaking order/Non speaking order

To

The Subordinate Judge,
Coonoor.

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R.SUBRAMANIAN

jv



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