

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.328 of 2019

and C.M.P. No.2394 of 2019

M.Dhamodaran

... Petitioner

Vs.

M.Varadaraju

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.09.2018 in I.A. No.863 of 2018 in O.S. No.27 of 2010 on the file of the Principal District Court, Chengalpet and allow the same.

For Petitioner : Mr. T.V.Badrinarayanan

For Respondent : Mr. V.B.Thirupathikumar

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ORDER

This petition is filed to set aside the order passed in I.A. No.863 of 2018 in O.S. No.27 of 2010 on the file of learned Principal District Court, Chengalpattu.

2. I.A. No.863 of 2018 was filed under Order 26 Rule 1 CPC, to appoint an Advocate Commissioner for examination of the petitioner who is the plaintiff in the suit. The case of the petitioner is that he suffered a major road accident in the year 2005 and his Lumbar Spine L4-L5 to L5-S1 intervertebral disc region was affected. He is struggling to move around and cannot walk steadily nor can he stand for few minutes. Therefore, he seeks appointment of Advocate Commissioner for his examination in the joint trial in O.S. No.27 of 2010 and O.S. No.115 of 2013. The respondent objected this petition on the ground that the petitioner appeared before Lok Adalat and Mediation. When the petitioner was able to appear before the Lok Adalat and Mediation, he cannot refuse to appear before the Court for giving evidence.

3. Considering the rival submission, the learned Principal District Judge, Chengalpattu, dismissed the petition on the ground that the medical reports of the petitioner seems to be normal and there is no specific report from the Doctor stating that the petitioner could not able to move freely. When he was able to attend the mediation, there is no reason why he cannot appear before the Court for facing the trial. On these reasons, the learned trial Judge, dismissed the petitioner. Against the dismissal of the said petition, this revision petition is preferred.

4. Learned counsel for the petitioner assailed the order of Principle District Judge, Chengalpattu, for the reason that the petitioner is aged 54 and he suffered major road accident and has problem with his spine. He is not able to stand continuously for more than few minutes and that is the reason why he filed the present petition.

5. This claim of the petitioner is contested by the learned counsel for the respondent stating that if the petitioner could attend the Lok Adalat and Mediation, he could also attend the Court, to face the trial. Further he stated that he is prepared to cross examine the petitioner on the same day.

6. The issue involved in this case is very limited. The petitioner claims that he is not able to stand for more than few minutes because of the spinal injury suffered by him in a road accident in the year 2005. It appears that he has produced some medical records in support of his claim. However, the learned Judge has not chosen to accept the medical records. The Civil Procedure Code was amended in the year 2002 and many provisions were newly introduced with an object of reducing the duration of litigation by reducing the work load of the Court. Order 18 CPC deals with hearing of the suit and examination of a witness. Order 18 Rule 4 CPC specifically deals with how to examine a witness in the trial. Order 18 Rule 4 CPC reads as follows:

“4. Recording of evidence.—*(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:*

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

5[(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.]

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in

writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.]”

This provision makes it clear that the examination-in-chief of witness shall be on affidavit and cross examination may be done either by the Court or by the commissioner appointed by it.

7. In the case before hand, there are two reasons available to entertain the request of the petitioner. One is that, the petitioner is not able to stand for more than few minutes due to the spine injury suffered by him in the road accident. Other one is Order 18 Rule 4 CPC mandates, wherever possible, the

cross examination of witness has to be done through the commissioner appointed by the Court. In either way, this Court is of the considered view that the request made by the learned counsel for the petitioner should be favourably considered. However, the learned trial Judge, negated the claim disbelieving the medical records and also taking note of the fact that the petitioner had earlier appeared for mediation and Lok Adalat. In mediation and Lok Adalat, the parties are not made to stand for hours. Whereas in the Court, in the course of cross examination, the witnesses need to stand before the Court, unless the Court offers them a seat for hours and depose. Therefore, this Court is inclined to set aside the order of learned Principal District Judge and allow this civil revision petition.

8. Accordingly, the fair and decreetal order of the learned Principal District Judge, Chengalpattu, in I.A. No.863 of 2018 in O.S. No.27 of 2010, dated 14.09.2018, is hereby set aside. The learned trial Judge, is directed to follow the procedures under Order 18 Rule 4 CPC by appointing an advocate commissioner to examine P.W.1. Thus the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.08.2021

Index: Yes / No

Speaking order / Non speaking order

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Copy To:

The Principal District Judge,

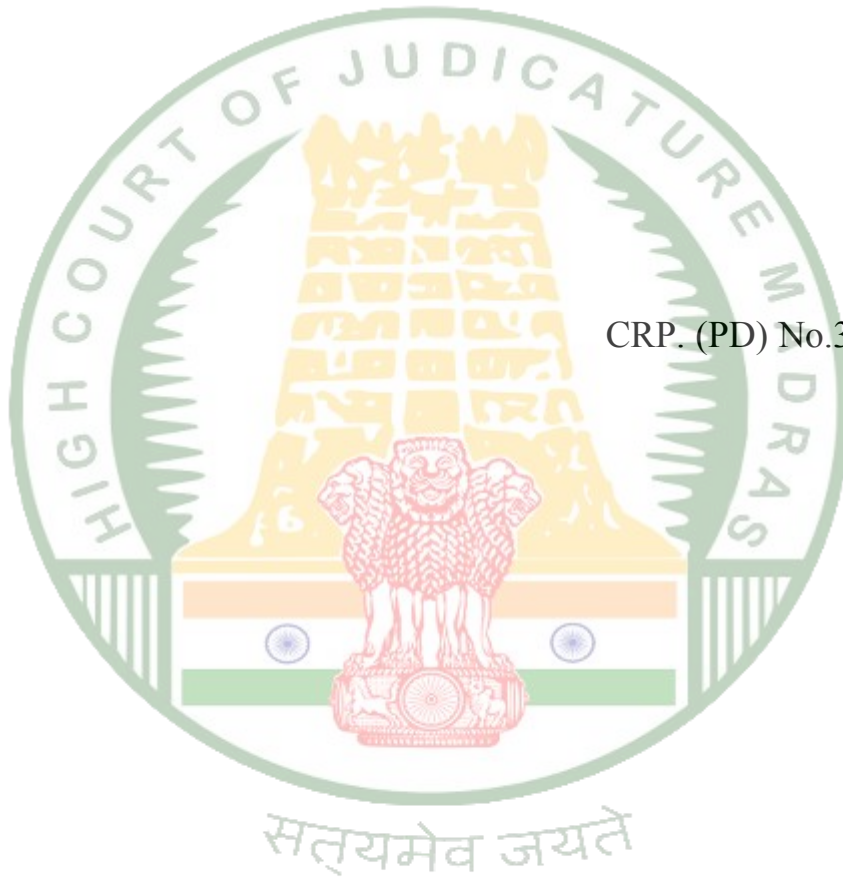
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G.CHANDRASEKHARAN. J.,

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