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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) No.288 of 2021
and
C.M.P.No.2628 of 2021

C.Anandaraj

...Petitioner/Respondent/Defendant

Vs

1.Nareshkumar
2.Geetha

...Respondents/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed I.A.No.188 of 2020 in O.S.No.84 of 2019 dated 21.11.2020, by the learned III Additional District and Sessions Court, Viruddachalam, Cuddalore District and allow this Civil Revision Petition.

For Petitioner: Mr.Veerakathiravan,
Senior Counsel
for Veera Associates

O R D E R

The limited prayer sought for in the present civil revision petition to set aside the fair and decreetal order passed I.A.No.188 of 2020 in O.S.No.84 of 2019 dated 21.11.2020, by the learned III Additional District and Sessions Court, Viruddachalam, Cuddalore District and allow this Civil Revision Petition.

2. The learned counsel for the petitioner would submit that the order of the lower Court in allowing the application to reopen the evidence of the plaintiff at the stage of arguments is contrary to law and against the settled principles of law. The learned Judge ought to have dismissed the petition to reopen the evidence of plaintiff, considering the fact that the



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evidence was closed on the side of the plaintiff based on the endorsement made by the plaintiff, after which, the defendant had examined himself and has been cross-examined at length and thereafter, the said application been filed. It is settled position of law that the evidence of any party cannot be reopened to fill up the lacunae in their case. Here the defendant having been cross-examined, and thereafter the petition has been filed only to fill the lacunae of the case of the respondents herein. Further, he would submit that it was specifically contended that the petition is bereft of particulars as to who and how many witnesses are to be examined and what is the relation of them with the facts of the case, in which case, the petition deserves to be dismissed and the learned judge ought to have so dismissed the petition. Further, the affidavit filed in support of the petition to reopen the evidence of the plaintiff has given no reasons whatsoever, much less any justifiable reason as to why the evidence of the plaintiff should be reopened. The affidavit merely states that the evidence of the plaintiff requires to be reopened, but for this, there is nothing pleaded as to why the evidence should be reopened. On this ground itself, the learned Judge ought to have dismissed the petition. Hence, the learned counsel for the petitioner prays to allow this petition.

3. Heard the learned counsel for the petitioner and perused the materials available on records.

4. Originally, the respondents/ plaintiffs filed a suit for specific performance, in which, on completion of pleading, trial was commenced and the examination of witnesses was closed. The respondents/ plaintiffs side was also examined and even cross examination of the petitioner/defendant was closed and the case is posted for arguments. While so, the respondents/plaintiffs have filed the Interim Application before the Court below to reopen the case.

5. According to the respondents/plaintiffs, the case has to be reopened to examine further important witness on their side. But it is the version of the petitioner/defendant that only on the request and endorsement made by the respondents/plaintiffs stating that there is no other witness to be examined, the trial Court closed the evidence on the side of the respondents/plaintiffs. According to the petitioner/defendant, the cross examination on their side was also closed on 06.3.2020 and the case is posted for arguments

6. There is no dispute that the case is pending for arguments. Though the petitioner/defendant states that pending the dispute, the parties have entered in to a settlement and in view of the same, the respondents/plaintiffs have agreed to



withdraw the suit, if the petitioner / defendant pays a sum of Rs.15,00,000/-, and that the petitioner/ defendants has paid a sum of Rs.5,00,000/- towards part payment, the same has been objected by the the respondents/ plaintiffs. The grounds raised in this revision cannot be decided at this stage as the same has to be substantiated by the oral and documentary evidence. Therefore, the contention of the petitioner/defendant that the respondents/plaintiffs have filed the present interlocutory petition in order to fill the lacunae cannot be decided at this stage as the same has to be decided only after a full-fledged trial. Considering these circumstances, the trial Court has rightly allowed the interlocutory petition with costs.

7. Therefore, I do not find any grounds to interfere with the order of the trial Court. Accordingly, the Civil Revision petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

sbn

To

The III Additional District and Sessions Judge,
Viruddachalam,
Cuddalore District.

+1cc to M/s. Veera Associates, Advocate, S.R.No.10181

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SV-I (CO)
SU (17/08/2021)