

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.3067 of 2015 and
MP.No.1 of 2015

K.P.Gandhi

..Petitioner

Vs.

Jayagandhi

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal orders dated 23.04.2014 of the learned District Munsif at Dharmapuri in IA.No.297 of 2014 in OS.No.67 of 1999, which suit has been now transferred to the file of the learned District Munsif at Palacode against order dated 04.12.2014 and pending there for trial.

For Petitioner : Mr.S.Sudharshan
for Mr.S.Subramanian

For Respondent : No appearance

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ORDER

This civil revision petition is directed as against the fair and decretal order passed in IA.No.297 of 2014 in OS.No.67 of 1999 dated

23.04.2014 on the file of the learned District Munsif at Dharmapuri thereby dismissing the petition filed by the petitioner to reopen the case for his evidence.

2. The petitioner is the second defendant in the suit filed by the respondent herein. After closing the plaintiff's evidence, defendants were examined as DW1 and DW2. Thereafter the evidence of defence was closed suo moto by the trial court. Therefore, the petitioner filed petition to reopen and the same was allowed. The application in IA.No.137 of 2014 was allowed with the cost of Rs.2,000/-. The petitioner after payment of cost of Rs.2,000/- to the other side, the petitioner filed proof affidavit. At that juncture, the trial court rejected the proof affidavit for the reason that the petitioner ought to have obtained necessary permission as provided under Order 18 Rule 3 (A) of CPC. Therefore, again the petitioner filed petition to reopen the defendants' evidence to examine himself as witness and the same was dismissed on the ground that it is well settled law that if a party wants to examine an independent witness he has to file an application under Order 18 Rule 3 (A) of CPC and reserves his right and then only he has to examine independent witness. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of *Ravi and Gurunathapillai Vs. Ramar* reported in **2008 (1) CTC 36** in which, the Hon'ble Division Bench of this Court has held as follows:

18. A perusal of the decisions of different High Courts indicate that the provision contained in Order 18 Rule 3(A) has been considered to be directory in nature. Even the provision itself contemplates that as a general rule, if the party wants to examine himself as a witness, he should be examined before other witnesses are examined. However, on the basis of an application of the party, he can be permitted to be examined as a witness after examination of other witnesses. While granting permission, the court is required to indicate reasons in writing. However, the question is: whether as an inexorable rule such permission has to be sought for at the beginning before any other witness is examined on behalf of the party or whether even at a subsequent stage after examination of some or all the witnesses the party himself can seek for permission?.

19. As observed in the various decisions and more particularly in the decisions of the Division Benches of Punjab & Haryana, Jammu & Kashmir, Patna and Orissa High Courts, what is necessary is that before giving such permission, the court is required to give reasons and obviously the reasons must be relevant. However to lay down as an inexorable rule that in no case such an application can be filed after the examination of any other witness may result in injustice.

20. Keeping in view the principle that procedural rules are normally considered as directory unless the consequence of not following the procedure is specifically indicated, it would be appropriate to hold that the Court can give permission to the party to examine himself at a later stage even if no such permission had been sought for at the very threshold. As a matter of fact, save and except in one or two decisions of the single Judges of the Madras High Court, most of the High Courts, including many of the Judges of Madras High Court, have preferred to follow a more liberal path of laying down the

proposition that even where such permission has not been sought for at the threshold, such permission can be granted for relevant reasons at a later stage. This is not to suggest that as and when such petition is filed the Court is bound to grant such permission merely for the asking. Obviously, the Court is required to consider the matter in its proper perspective and is required to find out as to why the party could not examine himself at the beginning and also as to why the application for seeking such permission was not filed at the threshold. If the Court finds that the party deliberately held himself back with a view to fill-up the lacunae in the evidence at a later stage, obviously such permission is to be refused irrespective of the fact whether permission is sought for at the threshold or at a later stage. If convinced on such aspects, the Court may permit the party to examine himself as a witness at a later stage. What is important is recording of reasons and obviously it means reasons which are germane to the matter, that is to say, relevant for the purpose.

The Hon'ble Division Bench of this Court held that procedural rules are normally considered as directory unless the consequence of not following the procedure is specifically indicated, it would be appropriate to hold that the Court can give permission to the party to examine himself at a later stage even if no such permission had been sought for at the very threshold.

3. In view of the above dictum laid down by the Hon'ble Division Bench of this Court, the order passed by the trial court is perverse and illegal. Accordingly, this Civil Revision Petition is allowed, and the order dated

23.04.2014 passed in IA.No.297 of 2014 in OS.No.67 of 1999 by the court below is set aside. Further, Considering the year of the suit, the petitioner is directed to complete his evidence within a period of four weeks from the date of receipt of copy of this order. Thereafter, the trial court is directed to dispose of the main suit within a period of six months. Consequently, connected miscellaneous petition is closed. No order as to costs.

07.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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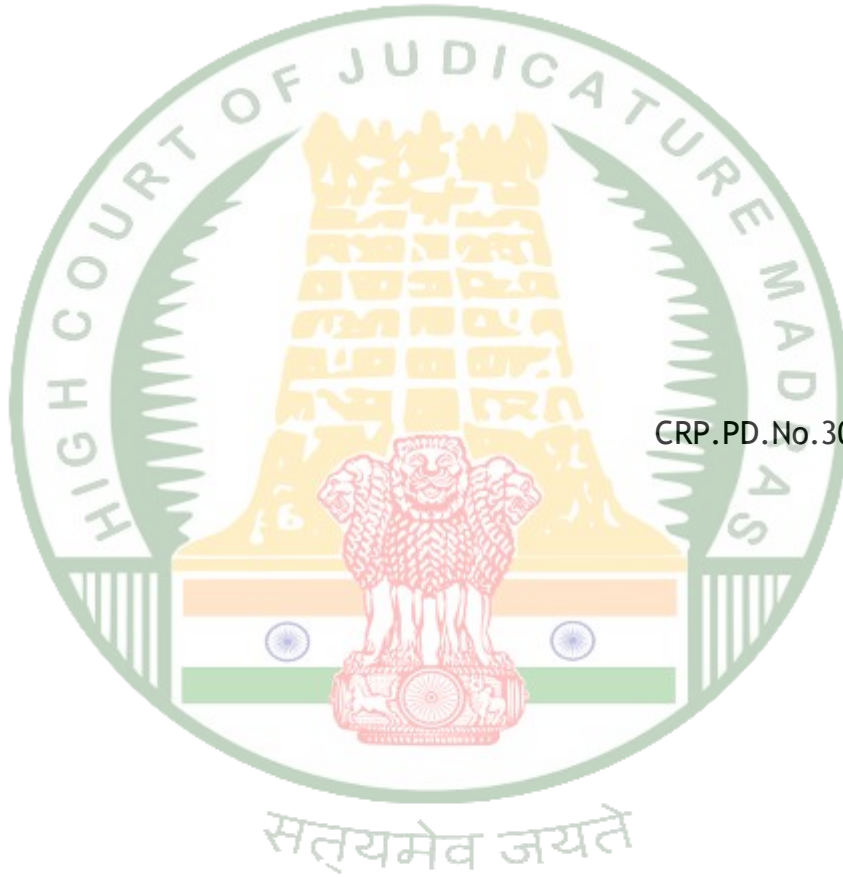
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G.K.ILANTHIRAIYAN,J.

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To

- 1.The District Munsif at Dharmapuri
- 2.The learned District Munsif at Palacode



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