



C.R.P.(PD)No.3393 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3393 of 2015
and M.P.No.1 of 2015

Banumathi

.. Petitioner

Vs.

1.Saraswathi
2.Chandra
3.Gajaraja
4.Yuvarani
5.Gajalakshmi
6.Kalyani
7.Nagaveni
8.Poornima
9.Mythili

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 10.03.2015 made in I.A.No.359 of 2015 in O.S.No.33 of 2015 on the file of the Principal District Munsif Court, Tirupattur.



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For Petitioner : Mr.E.Mohamed Abbas

For R1 : Mr.V.Raghavachari

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

Civil Revision Petition is filed against the order dated 10.03.2015 made in I.A.No.359 of 2015 in O.S.No.33 of 2015 on the file of the Principal District Munsif Court, Tirupattur.

2.The petitioner is 2nd defendant, 1st respondent is plaintiff and the respondents 2 to 9 are the defendants 1, 3 to 9 in O.S.No.33 of 2015 on the file of the Principal District Munsif Court, Tirupattur. The 1st respondent filed the said suit for declaration of judgment and decree dated 23.07.1993 made in O.S.Nos.247, 465 and 467 of 1993, judgment and decree dated 30.06.1993 made in O.S.No.525 of 1993 and judgment and decree dated 12.07.1993 made in O.S.No.535 of 1993 as null and void and for permanent injunction. In the said suit, summons were issued



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to the petitioner and respondents 2 to 9. The summons were served on the petitioner/2nd defendant, respondents 3 and 5/defendants 3 and 5 and they have entered appearance through Advocate. The respondents 4, 7 and 8/defendants 4, 7 and 8, who have also been served with summons, did not appear and they were set exparte. The summons have not been served on the respondents 2, 6 and 9/defendants 1, 6 and 9. The petitioner, defendants 3 and 5 did not file any written statement. The petitioner filed present I.A.No.359 of 2015 under Order X read with Section 151 of C.P.C. to examine the 1st respondent at the first hearing of the suit. The 1st respondent filed counter affidavit. The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the I.A. holding that it is pre-mature to question the plaintiff under Order X of C.P.C.

3.Against the said order of dismissal dated 10.03.2015 made in I.A.No.359 of 2015 in O.S.No.33 of 2015, the petitioner has come out with the present Civil Revision Petition.



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4.The learned counsel appearing for the petitioner contended that as per Order X Rule 1 of C.P.C., at the first hearing of the suit, the Court shall ascertain whether the 1st respondent/plaintiff is admitting or denying the allegations made by the petitioner/2nd defendant. The learned Judge erred in holding that 'first hearing' mentioned in Order X Rule 1 of C.P.C. is only at the time of framing issues. On such wrong interpretation, the learned Judge erroneously dismissed the application filed by the petitioner. The learned counsel appearing for the petitioner further contended that the trial Court must consider the averments in the plaint in a meaningful manner and when the suit is vexatious one, the same must be rejected at the first hearing itself.

4(i). The learned counsel appearing for the petitioner in support of his contentions, relied on the following judgments:

(i) AIR 1977 SC 2421 [T.Arivanandam vs. V.Satyapaul];

“5. . . . The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of



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not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch.XI) and must be triggered against them. ...”

(ii). (2002) 4 SCC 468 [Vikas Aggarwal vs. Anubha];

“11. ... So far the question regarding the first date of hearing is concerned, it is too technical a ground to consider the matter like one in hand. The decisions which have been relied upon relate to the disputes between tenant and landlord and while interpreting the term "first date", the provisions of the Rent Control Statutes have also been taken into account. It is submitted that inherent powers of the Court under Section 151 C.P.C. can always be



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exercised to advance interests of justice and the technicalities will have no place in such matters. . . .

12.We would like to observe that Order 10 CPC in an enabling provision providing that the court at the first hearing of the suit shall ascertain from each party about their pleadings. It does not in any manner place any bar on the powers of the court to seek clarification from any party in an appropriate case, at any date earlier than one fixed for framing of issues so as to advance the interest of justice. It would not be in violation of Order 10 CPC or in conflict thereof. Considering the facts and circumstances of the case we agree with the submission made on behalf of the respondent and find that the appeal lacks merit so as to call for any interference by us under Article 136 of the Constitution.”

5.Per contra, the learned counsel appearing for the 1st respondent contended that first hearing mentioned in Order X Rule 1 of C.P.C. is only hearing at the time of framing issues. Only controversies between the parties are decided and the Court can examine the plaintiff or



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defendant. The learned Judge has correctly interpreted the provisions of Order X of C.P.C. and dismissed the I.A. by giving valid reason.

5(i).The learned counsel for the 1st respondent in support of his contentions, relied on the following judgments:

(i) (1981) 3 SCC 667 [Ved Prakash Wadhwa vs. Vishwa Mohan];

“3. We are not disposed to investigate the facts in detail. The question of law raised before us may perhaps be pronounced upon as it is of general importance. Section 20(4) of the Act which we have excerpted above fixes the crucial date for deposit of rent as "at the first hearing of the suit." What is "the first hearing of the Suit"? Certain decisions have been cited before us of the Allahabad High Court which indicate that "the first hearing of the suit" is when, after the framing of issues, the suit is posted for trial, that is, production of evidence. In the matters of State statutes where procedure has to be pronounced upon, the practice of the Court is the best guide to interpretation and the Allahabad High Court having pronounced upon



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the question we think we ordinarily accept such interpretation unless there is something revoltingly wrong about the construction. We see none here and, therefore, adopt as correct the decision of the High Court regarding the meaning of the expression "at the first hearing of the suit". We may however add that the expression "at the first hearing of the suit" is also to be found in Order 10, Rule 1, Order 14, Rule 1(5) and Order 15, Rule 1 of the Code of Civil Procedure. These provisions indicate that "the first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties (Order 10, Rule 1) and the settlement of issues (Order 14, Rule 1(5))."

(ii) (1987) 1 SCC 222 [Sham Lal (dead) by Lrs. vs. Atme Nand

Jain Sabha (Regd.), Dal Bazar];

“8.The day mentioned in the summons i.e. June 26, 1969 in our considered opinion cannot be treated to be the day of first hearing of the ejectment application but it is the day for appearance of the defendant as on that day the Court does not take up the hearing or apply its mind to the hearing of the application. It is only after written statement is filed, the issues are framed



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and hearing commences. We draw inspiration and support from a decision of this Court rendered in *Ved Prakash v. Vishwa Mohan* [1981] 3 SCC 667, wherein this Court was concerned with the same expression viz. 'first hearing' employed in Sec. 20(4) of the U.P. Rent Act of 1972 (prior to the amendment of U.P. Act 28 of 1976) which is in pari-materia with the corresponding provision in the Punjab Rent Act. ...

9.This Court whilst interpreting the critical expression "first hearing" enunciated the law as under:

The question of law raised before us may perhaps be pronounced upon as it is of general importance. Section 20(4) of the Act which we have excerpted above fixes the crucial date for deposit of rent as "at the first hearing of the suit." What is "the first hearing of suit"? Certain decisions have been cited before us of the Allahabad High Court which indicate that "the first hearing of the suit" is when, after framing of issues, the suit is posted for trial, that is, production of evidence. In the matters of State statutes where procedure has to be pronounced upon, the practice of the Court is the best guide to interpretation and the Allahabad High Court having pronounced upon the question we think we ordinarily accept such interpretation unless there is something revoltingly wrong about the construction. We



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(iii) (2012) 4 SCC 307 [Kanwar Singh Saini vs. High Court of

Delhi];

“12. The suit was filed on 26.4.2003 and notice was issued returnable just after three days, i.e. On 29.4.2003 and on that date the written statement was filed and the appellant appeared in person and his statement was recorded. Order 10 Rule 1 CPC provides for recording the statement of the parties to the suit at the "first hearing of the suit" which comes after the framing of the issues and then the suit is posted for trial, i.e. for production of evidence. Such an interpretation emerges from the conjoint reading of the provisions of Order 10 Rule 1, Order 14 Rule 1(5) and



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Order 15 Rule 1 CPC. The cumulative effect of the above referred provisions of CPC comes to that the "first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard by the Court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed.

13.The date of "first hearing of a suit" under CPC is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the "first hearing of the suit" prior to determining the points in controversy



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between the parties i.e. framing of issues does not arise. The words the "first day of hearing" do not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. [Vide: Ved Prakash Wadhwa v. Vishwa Mohan, AIR 1982 SC 816; Sham Lal (dead) by Lrs. v. Atme Nand Jain Sabha (Regd.) Dal Bazar, AIR 1987 SC 197; Siraj Ahmad Siddiqui v. Shri Prem Nath Kapoor, AIR 1993 SC 2525; and M/s Mangat Singh Trilochan Singh v. Satpal, AIR 2003 SC 4300].”

(iv) (2012) 11 SCC 574 [Badami (deceased) by her legal heir vs.

Bhali];

“16.Order 10 deals with the examination of parties by the court. Rule 1 of Order 10 provides for ascertainment whether allegations in pleadings are admitted or denied. It stipulates that:

“1.Ascertainment whether allegations in pleadings are admitted or denied__At the first hearing of the suit the court shall ascertain from each party or his



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pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The court shall record such admissions and denials.”

Use of the term “first hearing of the suit” in Rule 1 has its own signification. Order 15 Rule 1 lays a postulate that where “at the first hearing” of the suit it appears that the parties are not at issue on any question of law or of fact, the court may at once pronounce the judgment.

17.Recently, this Court in Kanwar Singh Saini v. High Court of Delhi (2012) 4 SCC 307, while dealing with the concept of first hearing, speaking through one of us (Dr.B.S. Chauhan, J) has opined thus: (SCC p.317, paras 12-13)

“12. The suit was filed on 26-4-2003 and notice was issued returnable just after three days i.e. on 29-4-2003 and on that date the written statement was filed and the appellant appeared in person and the statement was recorded. Order 10 Rule 1 CPC provides for recording the statement of the parties to the suit 'at the first hearing



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of the suit' which comes after the framing of the issues and then the suit is posted for trial i.e. for production of evidence. Such an interpretation emerges from the conjoint reading of the provisions of Order 10 Rule 1, Order 14 Rule 1(5) and Order 15 Rule 1 CPC. The cumulative effect of the above referred provisions of CPC comes to that the 'first hearing of the suit' can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard by the court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed.

13. The date of 'first hearing of a suit' under CPC is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the 'first hearing of the suit' prior to determining the points in controversy between the parties i.e. framing of issues does not arise. The words 'first day of hearing' do not mean the day for the return of the summons or the returnable date, but the day on which



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the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. (Vide Ved Prakash Wadhwa v. Vishwa Mohan AIR 1982 SC 816, Sham Lal v. Atme Nand Jain Sabha (1987) 1 SCC 222, Siraj Ahmad Siddiqui v. Prem Nath Kapoor AIR 1993 SC 2525 and Mangat Singh Trilochan Singh v. Satpal)AIR 2003 SC 4300.”

After so stating, it has been further observed as follows: - (Kanwar singh case (2012) 4 SCC 307, SCC p.318, para 14)

“14.From the above fact situation, it is evident that the suit was filed on 26-4-2003 and in response to the notice issued in that case, the appellant-defendant appeared on 29.4.2003 in person and filed his written statement. It was on the same day that his statement had been recorded by the court. We failed to understand as to what statutory provision enabled the civil court to record the statement of the appellant-defendant on the date of filing the written statement. The suit itself has been disposed of on the basis of his statement within three weeks of the institution of the suit.” ”

(v) 2002 -1 – LW – 713 [R.C.Sundaravalli vs. T.D.Shakila];

“8. Now, what is the first hearing of the suit? The definition in Rule 3(6) of the Civil Rules of Practice



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defines "first hearing" thus:

'First hearing' includes the hearing of a suit for settlement of issues, and any adjournment thereof

The word "first hearing" appears in the Code in several places. Under Order 10, C.P.C, the Court has the power to ascertain whether the allegations in the pleadings are admitted or denied at the first hearing of the suit. The oral examination of parties to elucidate matters in controversy is also permissible at the first hearing of the suit under Order 10, Rule 2, C.P.C. Order 13, Rule 1, C.P.C, before the 1976 amendment had dealt with the production of documentary evidence at first hearing. Since this led to some controversy, the words "first hearing" in the heading of Order 13, Rule 1, C.P.C were replaced by the words "at or before the settlement of the issues" and Rule 1 was amended by replacing the words "at first hearing of the suit" with "at or before the settlement of the issues". Order 14, C.P.C again contains the words "at the first hearing". Order 14, Rule 1(5) C.P.C deals with settlement of issues and this again, uses the words "at the first hearing of the suit". The Court frames the issues for



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deciding the case right after examination under Order 10, Rule 2, C.P.C and hearing the parties or other pleaders and after reading the plaint and written statement at the first hearing of the suit. Order 14, Rule 6, C.P.C provides that the Court need not frame and record issues where the defendant at the first hearing of the suit makes no defence.

9. If the words "First hearing of the suit" is so understood, then under Section 12(2) of the Tamil Nadu Court Fees Act, the defendant can plead either by written statement or otherwise the defence relating to improper valuation of suit or insufficiency of Court fees before the first hearing of the suit. In this case, the issues have been settled, therefore, the first stage before which the defendant could have raised his objection has passed. The Section provides for another stage when a defendant could plead as above. This is before the evidence is recorded on the merits of the claim. Therefore, after evidence is commenced on the merits of the claim, a reading of the Section indicates that the defendant does not have any further opportunity to plead either that the suit has not been



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properly valued or that the fees paid is not sufficient. In this case, both the stages have passed. The issues have been settled and even as per the admission of the petitioner, the additional issues have also been framed and it is also seen from a perusal of the judgment that trial had already started.

.. ..

.. ..

17. Any way, the narration of events shows that the question relating to Court fee has been raised not before the first hearing of the suit nor before evidence was recorded on the merits of the claim. The learned counsel for the petitioner repeatedly urged that there is no delay on his part because additional issues were framed only on 20.9.99 and the application had been filed on 22.9.99. But paragraph 3 of the counter filed by the respondent shows that even the question relating to the payment of Court fees itself was named in the additional statement only after the trial had commenced and P.W.1's evidence has been recorded. (emphasis applied). This is not contradicted. So it is clear that it is belated. The delay is not with reference to the date on which additional issues were framed. The delay is with



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reference to the stage at which it is raised in view of the provisions of Section 12(2) of the Act. I see no reason to interfere with the order of the Court below. The C.R.P. is dismissed with costs. CMP 5690 of 2001 is closed.”

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

7.From the materials on record, it is seen that present I.A.No.539 of 2015 is filed by the petitioner under Order 10 of C.P.C. to examine the 1st respondent. Order X of C.P.C. reads as follows:

Order X of C.P.C.:

“1.Ascertainment whether allegations in pleadings are admitted or denied__At the first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

[1-A. Direction of the Court to opt for any one mode of alternative dispute resolution.]_After recording



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the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of Section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1-B. Appearance before the conciliatory forum or authority. Where a suit is referred under rule 1-A, the parties shall appear before such forum or authority for conciliation of the suit.

1-C. Appearance before the Court consequent to the failure of efforts of conciliation. Where a suit is referred under rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.”

8.A reading of Order X Rule 1 of C.P.C. makes it clear that the Court may ascertain at the first hearing from the plaintiff or defendant or from their Advocates whether the party admits or denies the allegations made against them in the plaint or in the written statement. Order X Rule



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1 of C.P.C. in other words, empowers the Court to examine the plaintiff or defendant whether they admit or deny the averments made against them in the plaint or written statement. When the defendant in the written statement fails to expressly or by necessary implications, admits or denies any of the plaint allegations, the Court can ascertain from the defendant whether he admits or denies the said plaint averments. Similarly, if the defendant made some allegations against the plaintiff in the written statement and no reply is filed thereto by the plaintiff, the Court can ascertain whether the plaintiff admits or denies those allegations. The Court can resort to Order X Rule 1 of C.P.C., where the Court finds plaintiff or defendant had failed to expressly or impliedly admit or deny any of the allegations made against him by other party. The examination under Order X Rule 1 of C.P.C. will not be necessary, where the pleadings of each party have been fully or clearly traversed by other party.



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9. In the present case, the petitioner wants to examine the 1st respondent/plaintiff even without filing written statement. In the judgments referred to above, which are relied on by both the parties, it has been categorically stated that first hearing is at the time of framing issues, when the Court applies its mind with regard to its dispute between the parties. In the present case, the petitioner is seeking leave of the Court to examine whether he admits or denies the averments made in the plaint. The defendant is not entitled to such a relief under Order X Rule 1 of C.P.C. He can seek the leave of the Court to examine the respondent whether he admits or denies the averments made in the written statement. Only when the petitioner files written statement and makes allegations against the 1st respondent and if the 1st respondent fails to deny those allegations, he can seek examination of the 1st respondent with regard to allegations made against the 1st respondent/plaintiff. The learned counsel for the petitioner contended that first hearing of the suit is when the suit is posted for hearing after issue of summons. The said contention is without merits, in view of the judgments of the Hon'ble Apex Court



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relied on by the counsel for 1st respondent. In those judgments referred to above, the Hon'ble Apex Court has categorically held that first hearing is at the time of framing issues, when the Court applies its mind with regard to its disputes between the parties. The ratio in the judgments relied on by the counsel for 1st respondent are squarely applicable to the facts of the present case. In view of the judgments relied on by the learned counsel for the 1st respondent, the judgments relied on by the learned counsel for the petitioner is not applicable to the facts of the present case.

10. For the above reasons, this Court is of the view that there is no error or irregularity in the order of the learned Judge warranting interference by this Court. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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To

The Principal District Munsif, Tirupattur.

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