

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

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

**CRP.PD.No. 4344 of 2015**

**and**

**MP.No.1 of 2015**

K.Easwaran

... Petitioner

Vs.

K.M.Murugesan

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the impugned order dated 16.07.2015 in I.A.No.233 of 2015 in O.S.No.470 of 1998 and allow the I.A.No.233 of 2015 in O.S.No.470 of 1998 on the file of the Principal Sub-Court at Tiruppur.

For Petitioner : Mr.M.Sivavarthanan

For Respondent : Mr.P.Valiappan

**ORDER**

This Civil Revision Petition is arising out of the fair and decretal order passed in I.A.No.233 of 2015 in O.S.No.470 of 1998 dated 16.07.2015 on the file of the learned Principal Sub Judge, Tiruppur, thereby, dismissing the petition filed by the petitioner seeking permission to receive additional documents.

2. The respondent is the plaintiff. He filed a suit for specific performance, on the strength of the agreement for sale dated 21.04.1995, in respect of the suit schedule property. The petitioner filed a written statement on 14.03.2001. Thereafter, after a period of 10 years, the petitioner filed the petition seeking permission to receive additional written statement in I.A.No.1487 of 2010. The same was dismissed and confirmed by this Court in CRP.PD.No.1823 of 2011. Thereafter, the plaintiff side evidence was closed and the defendant also examined DW.1 and DW.2. When the matter was posted for cross examination of DW.2, the petitioner again filed the petition to receive documents. The same was also dismissed and aggrieved by same, the present Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the petitioner is a poor coolie and he is cart-man. He is looking after his family and the suit property is a residential house. The respondent is a financier and carrying on the finance business in the daily market. During the course of avocation, the petitioner used to borrow money for his family urgent needs. While being so, the petitioner borrowed a sum of Rs.50,000/- and in turn he executed agreement for sale in the suit schedule property. In the

Thiruppur locality all the financiers used to get agreement for sale and even after payment of entire dues they used to file a suit for specific performance. At the time of filing the written statement, the petitioner was not in possession of the documents, which are intended to be marked on his side. Now only the petitioner found so many documents which would clearly prove that the respondent is the financier and after lending money to various persons used to get similar agreement for sale from the borrowers as security and file the suit for specific performance.

4. He would further submit that the petitioner is a coolie and without any documents he cannot able to defend the case. Though the petitioner already filed a petition to receive additional written statement and the same was dismissed, he did not file any application to receive documents in the earlier occasion. Though the present application was filed at a belated stage to disprove the case of the plaintiff, the petition is necessary to receive this documents, since they are vital in nature.

5. Per contra, the learned counsel for the respondent would submit that the suit is of the year 2008 for specific performance. On two occasions,

the petitioner was set ex-parte and subsequently, it was set aside. Therefore, the petitioner is in the habit of dragging the proceedings by filing a petition. In fact, he already filed the petition in the year 2010 to receive additional written statement in I.A.No.1487 of 2010 and the same was dismissed. Aggrieved by the same, the petitioner preferred Civil Revision Petition before this Court in CRP.PD.No.1823 of 2011 and this Court by an order dated 01.08.2014 dismissed the same.

6. In fact, this Court also directed the trial Court to dispose the suit within a period of four months from the date of receipt of a copy of this order. Thereafter, the trial Court proceeded with the trial and the plaintiff side evidence closed. In fact, the defendant also examined DW.1 and DW.2 and the matter was posted for cross examination of DW.2. At this juncture, the petitioner filed a petition to receive documents. Therefore, the present revision petition is nothing but clearly an abuse of process of law and the trial Court rightly dismissed the petition.

7. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

8. The petitioner is the defendant in the suit filed by the respondent for the specific performance, on the strength of the agreement for sale dated 21.04.1995. The suit is of the year 1998. On 14.03.2001, the petitioner filed written statement. After a period of 10 years, the petitioner filed a petition to receive additional written statement in I.A.No. 1487 of 2010 and the same was dismissed and also confirmed by this Court by an order dated 01.08.2014 in CRP.PD.No 1823 of 2011. When this Court dismissed the Civil Revision Petition it was observed as follows:-

*“5. A perusal of the additional written statement sought to be filed by the petitioner does not disclose any material facts supporting the case of the petitioner/defendant, especially under the circumstances that the petitioner has already filed a written statement denying the claim of the plaintiff/respondent herein. At any event, since the additional written statement sought to be filed was after nearly 12 years of the filing of the original suit and after examination of the PW-1, the Court below has rightly rejected the Interlocutory Application on the reason that the application is highly belated one and that the same was filed only with an intention to drag on the proceedings. I find no error or infirmity in the order passed by the Court below.”*

9. Immediately after dismissal of the Civil Revision Petition on 06.04.2015, the petitioner filed the present petition to receive documents. Admittedly, the petitioner was set ex-parte on two occasions and thereafter, the ex-parte order was set aside and the petitioner was allowed to defend the suit. Therefore, the present petition is nothing but, clearly an abuse of process of law and filed only to drag the proceedings and nothing else. Therefore, this Court finds no irregularity or infirmity in the order passed by the trial Court.

10. In view of the same, this Civil Revision Petition is dismissed. This Court already directed the trial Court to dispose the suit within the stipulated time. The Court below therefore is directed to duly comply the same. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

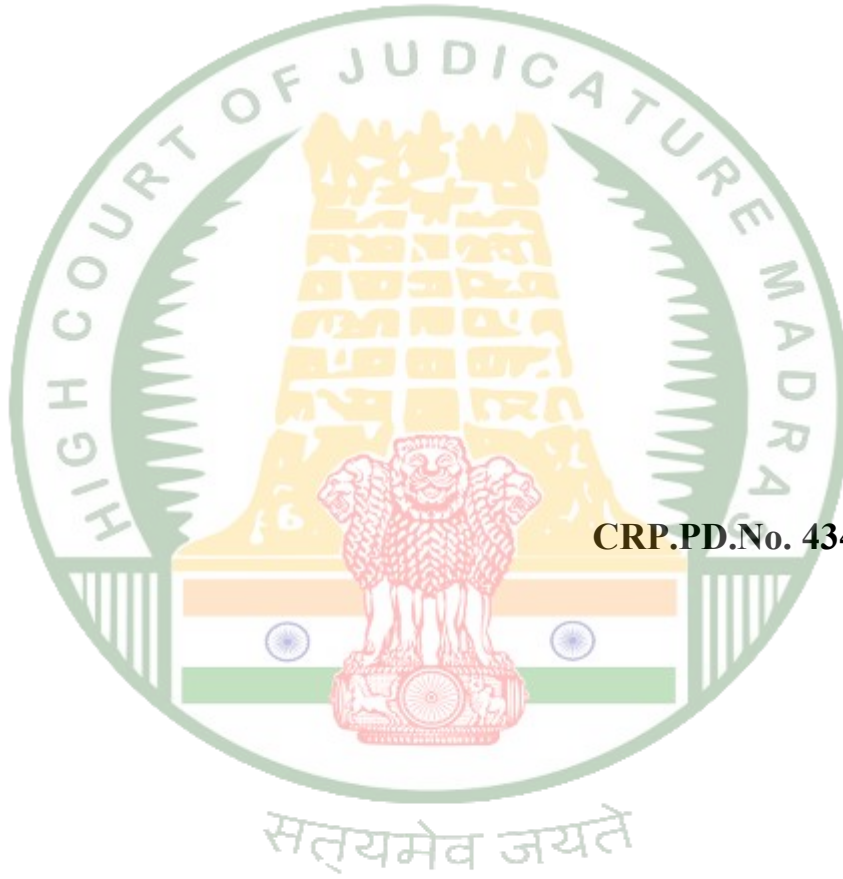
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**G.K.ILANTHIRAIYAN,J.**

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To

The Principal Sub-Court, Tiruppur.



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