

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.603 of 2021

and

C.M.P.No.5216 of 2021

Arulgnanam

.. Petitioner

Vs

Ibram Khan

.. Respondent

Civil Revision Petition filed under Article 227 of Code of Civil Procedure to set-aside the Fair and Decreetal in I.A.No.460 of 2020 in O.S.No.193 of 2018 dated 18.12.2020 passed by the learned Principal District Judge, Cuddalore, and thereby allow the above Civil Revision Petition.

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For Petitioner

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Mr.B.Gopalakrishnan

ORDER

This Revision Petition is directed against the order dated 18.12.2020 in I.A.No.460 of 2020 in O.S.No.193 of 2018 now pending before the Principal District Court, Cuddalore.

2.The plaintiff is the revision petitioner. The plaintiff had filed O.S.No.193 of 2018 against the defendant seeking a judgment and decree for a sum of Rs.13,25,333/- together with interest at 12% per annum on Rs.10,00,000/- from the date of the suit till the date of decree and also till the date of realization and for costs of the suit.

3.The defendant entered appearance and filed written statement. Thereafter, issues were framed and the parties were invited to adduce evidence. The plaintiff examined as witnesses PW-1 to PW-4. PW-1 is the plaintiff herein and the other witnesses were examined to speak about the execution of the promissory note namely, the witnesses to the promissory note and the scribe of the promissory note. All the four witnesses were also cross-examined by the defendant. Evidence on the side of the plaintiff was closed. The matter was then posted for recording evidence on the side of the defendant. At that point of time,

the defendant filed I.A.No.460 of 2020 seeking permission to recall all the four witnesses examined on behalf of the plaintiff for further cross-examination.

4.No independent application was filed to reopen the evidence of the plaintiff.

5.While adjudicating the issue, the only reason given for allowing the said application was that, in the interest of justice and to give a fair chance the Court was of the opinion, that the petition has to be allowed.

6.I am not able to comprehend how the witness can come back to the witness box and subject themselves for cross-examination particularly, when the evidence on the side of the plaintiff has been closed. An order reopening the said evidence will have to be passed. Only thereafter can the witness can graze the witness box. They cannot simply come to the witness box and invite the learned counsel for the defendant to cross-examine them.

7.The defendant will have to give necessary explanation as to why questions were not put in full to the witnesses when he had an opportunity to cross examine them. It is seen from the affidavit filed in support of the I.A.No.460 of 2020 that an averment has been made that all the four witness had spoken in contradiction to each other. If that be so, the defendant can take advantage of such contradiction during the course of arguments and the learned Judge should analyze the evidence and come to a conclusion. The learned Judge can either accept the evidence or accept them partly or reject them partly or rejected them wholly. The privilege is with the learned Judge, but to subject the witness for further cross-examination merely, since there is a contradiction between the evidence of PW-1 to PW-4 without any order to reopen the evidence, in my opinion is not justified. The defendant should also give positive evidence putting forth his defense and subject himself for cross-examination. Without taking recourse to such an action, filing an omnibus petition to recall all the four witnesses, cannot be appreciated. Therefore, the order is interfered with.

8.The learned Judge may proceed further and invite the defendant to adduce evidence. If at all the defendant wants to recall

any of the witnesses, then proper reasons must be disclosed in the affidavit and an application must be filed to reopen evidence of the plaintiff and the plaintiff must also be given necessary opportunity to file a counter and on the basis of the pleadings, and not merely on the basis of interest of justice, a considered order will have to be passed.

9. With these observations, the Civil Revision Petition is allowed. The order is set aside. No costs. Consequently, connected civil miscellaneous petition is also closed.

07.04.2021

Internet: Yes/No
Index: Yes/No
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To
The Principal District Judge,
Cuddalore.

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C.V.KARTHIKEYAN,J.

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