



CRP.PD.No.1208/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.1208/2019 & CMP.No.7781/2019

[Physical Hearing]

Murbaka Begum

.. Petitioner /
Defendant

Vs.

R.Jaadesh Kumar

.. Respondent /
Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 12.11.2018 passed in IANo.683/2018 in OS.No.174/2014 by the learned Sub Judge, Gobichettipalayam.

For Petitioner	:	Mr.D.Jaganathan
For Respondent	:	Mr.I.C.Vasudevan



CRP.PD.No.1208/2019

WEB COPY

ORDER

- (1) This Civil Revision Petition is directed against the order dated 12.11.2018 made in IA.No.683/2018 in OS.No.174/2014 on the file of the learned Subordinate Judge, Gobichettipalayam.
- (2) Brief facts that are necessary for the disposal of this Civil Revision Petition are as follows.
- (3) The revision petitioner is the defendant in the suit in OS.No.174/2014, which was filed by the respondent/plaintiff for recovery of a sum of Rs.5,18,166/- with interest @ 9% per annum/
- (4) During the pendency of the suit, the revision petitioner herein/defendant filed an application in IA.No.682/2018 under Order 8 Rule 1A-3 CPC read with 151 CPC to condone the delay in produce the petition mentioned document. A certified copy of the Attendance Register of the employees of Omandurar Government Multi Speciality Hospital was sought to be produced at the time of trial. The said petition was allowed subject to proof and relevance. Simultaneously, the revision petitioner herein/defendant filed another



CRP.PD.No.1208/2019

WEB COPY

application in IA.No.683/2018 under Section 151 CPC to permit her to give evidence after examining other witnesses on her side.

- (5) The said Interlocutory Application was considered by the Trial Court by citing the reason that the revision petitioner/defendant has filed IA.No.683/2018 under Section 151 CPC and that the remedy available to her under Order 18 Rule 3A CPC. The Lower Court was of the view that the petitioner herein/defendant if wishes to appear as a witness, she can do so before any other witness was examined on her behalf, unless the Court for reasons to be recorded, permits her to appear as her own witness at a later stage. It was further observed by the Trial Court that the revision petitioner/defendant has a right to examine any person as a witness on her side and however, if she wants to examine herself after examination of all the witnesses on her side, she has to give reasons for granting such permission. Stating that the petitioner has not given reasons, the Trial Court dismissed IA.No.683/2018. Aggrieved by the same, the present Civil Revision Petition is filed.

- (6) This Court is unable to sustain the order of the Lower Court for the



CRP.PD.No.1208/2019

WEB COPY

following reasons. Firstly, the suit was filed for recovery of money and the revision petitioner/defendant pleaded that she did not borrow any amount from the respondent/plaintiff. It is stated in the plaint that the amount was advanced to the revision petitioner/defendant on 16.01.2014 by executing a Post Dated Cheque dated 16.07.2014. Since the revision petitioner/defendant denied the transaction as such, she wanted to prove that on the alleged date of transaction, she was on duty and therefore, wanted to mark the Attendance Register to show her presence at the work place through a witness. The Attendance Register maintained for marking the attendance of the employees of the Omandurar Government Multi Speciality Hospital for the year 2014 was marked. A witness was also examined as DW1 to speak about the document marked. When the revision petitioner/defendant filed an application earlier to mark the document, the prayer was granted subject to proof of relevance. When the present application in IA.No.683/2018 was filed, the prayer was to examine herself after examination of other witnesses on her side.



CRP.PD.No.1208/2019

WEB COPY

(7) Order 18 Rule 3A CPC enables a party to seek permission to examine himself/herself at a later stage after examining the other witnesses on his/her behalf for reasons. In this case, the revision petitioner/defendant has not given up her right to examine herself at a later point of time. The purpose of examination of DW1, as appears from the record, is to produce the Attendance Register pertaining to the employees of the Omandurar Government Hospital for a specific purpose. Immediately after the order in IA.No.682/2018, the petitioner has taken steps to examine DW1. Even though IA.No.683/2018 was dismissed, it is admitted that a doctor from the Hospital was examined on the petitioner's side as DW1 on 30.01.2019. By virtue of intervening event, the petitioner will be deprived of an opportunity to examine herself, if the order of the Lower Court is confirmed. In view of the subsequent event, this Court is unable to sustain the order which is too technical. In the interest of justice, this Revision Petition deserves to be allowed.



CRP.PD.No.1208/2019

WEB COPY

(8) In the result, this Civil Revision Petition is **allowed** and the order dated 12.11.2018 passed in IANo.683/2018 in OS.No.174/2014 by the learned Sub Judge, Gobichettipalayam, is **set aside**. No costs. Consequently, connected miscellaneous petition is closed.

16.12.2021

AP

Internet : Yes

To

The Sub Judge

Gobichettipalayam.

NOTE TO THE REGISTRY:- Nowadays, it has become the practice of the Advocates to file the typed set containing affidavits and petitions without mentioning the numbers in the Interlocutory Applications or Petitions filed before the Lower Court. Some times, it creates confusion while disposing of the case. **Hence, the Registry is directed to issue Circular to all the Appeal Examiners to insist that the copies of the affidavits/petitions of the Lower Court proceedings should not be left blank and the learned counsels should be requested to fill up the blanks, in case if the same is noticed by the Appeal Examiners.**

COPY OF THE ABOVE ORDER TO:-[1]The Registrar [Judicial], High Court, Chennai, and [2] The Joint Registrar [AS], High Court, Chennai.

S.S.SUNDAR, J.,



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CRP.PD.No.1208/2019

AP

CRP.PD.No.1208/2019

16.12.2021