



CRP.PD.Nos.1329 & 1331/2019

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DATED : 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.Nos.1329 & 1331/2019 & CMP.No.8719/2019

[Physical Hearing]

1.M/s.ABT Maruti,
rep.by its Senior General Manager
No.72, Mount Road, Guindy
Chennai 600 032.

2.M/s.ABT Ltd
rep.by its Managing Director,
NO.72, Mount Road, Guindy
Chennai 600 032.

.. Petitioners /
Defendants in
both petitions

Vs.

1.M/s.Swaraj Security Force
rep.by its Managing Partner
V.Mohanraj
2.V.Mohanraj
3.M.Lakshmi

.. Respondents
/ Plaintiffs in
both petitions



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Common Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated dated 08.03.2019 passed in IA.Nos.01/2019 and 02/2019 in OS.No.3021/2017 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai.

For Petitioners in both
CRPs : Mr.S.Sriram
For RR 1 to 3 in
both CRPs : Mr.M.Imthias

COMMON ORDER

- (1) These Civil Revision Petitions are directed against the order dated, 08.03.2019 in I.A.No.01/2019 and I.A.No.02/2019 in O.S.No.3021/2017 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai, in allowing the petition to reopen the case and to recall the P.W.1 as witness, for further examination to mark a document.
- (2) Brief facts that are necessary for the disposal of these Civil Revision Petitions are as follows:
- (3) In these Civil Revision Petitions, the respondents as plaintiffs filed the Suit in O.S.No.3021/2017 before the learned XVII Assistant



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Judge, City Civil Court, Chennai for recovery of a sum of Rs.6,26,198/- with the interest 18% and for consequential relief.

- (4) The Suit was filed on the basis of money due for the services rendered by the respondents/plaintiffs, who are engaged to provide security services to the petitioners. During the pendency of the Suit, the respondents filed an application in I.A.No.01/2019 and I.A.No.02/2019 in the Suit to reopen plaintiff side evidence and to recall P.W.1 in/for the purpose of marking a document namely, the Partnership Deed in the Suit. The said applications were allowed by the Trial Court. Aggrieved by the same, the defendants have preferred the above Civil Revision Petitions.
- (5) Learned counsel appearing for the revision petitioners submitted that the applications filed by the plaintiffs to reopen the case and to recall the P.W.1 for letting in further evidence is not permissible in law and in the given case, the Court below failed to give sufficient opportunity to the revision petitioners for making their submissions. Learned counsel submitted that applications cannot be allowed to reopen and recall witnesses to fill up lacunae and that



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the Suit cannot be reopened especially when the defendants side evidence was closed.

- (6) Learned counsel then relied upon the evidence of P.W.1. During cross examination. It is pointed out by the learned counsel that in January, 2018, when the plaintiffs witness was cross examined, the defendants have suggested to the witness about the document to show the existence of the Partnership Firm and about the authorised representative of the firm to institute the Suit against the defendants. It is contended by the learned counsel that the issue relates to the production of the necessary document was raised long before the witness was examined. Hence, it is submitted that the document if any ought to have been filed long back.
- (7) It is further submitted that the applications filed by the respondents/plaintiffs are not only belated but also lacking *bona fides*. The learned counsel submitted that the Suit was reserved for judgment and that the plaintiffs at that stage filed the applications just to fill up the lacunae and to withdraw the admissions made the P.W.1, in favour of the defendants during the cross examination.



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This Court carefully gone through the evidence which was relied upon by the learned counsel appearing for the revision petitioners. There is nothing to indicate that the plaintiffs wanted to withdraw any admissions made by P.W.1 in the course of either cross examination or chief examination.

- (8) Several questions were put to the witness P.W.1 about the document to show the existence of plaintiffs as a Partnership firm. It is also to be noted that the questions relating to the competence of the witness and the authentication given to the representative of the plaintiffs to file the Suit are casual. One of the suggestions that was put to the plaintiffs witness was whether P.W.1 has produced any evidence to show who are all the partners in the plaintiffs firm. In view of the nature of questions put to P.W.1., and pleadings this Court is able to see that the plaintiffs were adviced to reopen and recall witness only to avoid the technical objection which may be considered by the Court, while, considering the claim of the plaintiff on merits.



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- (9) In that view of the facts and circumstances of the case, this Court is perfectly in agreement with the Lower Court to allow the petitions. It is specifically stated that reason for not filing the said document has been satisfactorily explained by the petitioner. This Court does not find any merits in the Civil Revision Petitions.
- (10) Learned counsel appearing for the revision petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of ***Bagai Construction Vs. Gupta Building Material Store*** reported in ***(2013)14 SCC 1*** wherein the Hon'ble Supreme Court had an occasion to consider the scope of Order 18 Rule 17 CPC. It is held by the Hon'ble Supreme Court that the provisions under Order 18 Rule 17 is not meant to fill up omissions or lacunae. It is also stated that witness cannot be recalled merely because no prejudice will be caused to the other side.
- (11) The Hon'ble Supreme Court has reiterated that the provisions under Order 18 Rule 17 CPC cannot be used in a routine manner which would defeat the very object of amendments made in the Civil Procedure Code. The provisions under Order 18 Rule 17 CPC



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enables the Court to reopen the case and recall the witness at any stage, however when such applications were filed belatedly, the Court is expected to see the *bona fides* of the applications. When acceptable reasons are assigned for allowing the applications at the belated stage the Court will not hesitate to give an opportunity to the plaintiffs to put forth their case after recording reasons for entertaining the applications.

- (12) When the Court is expected to be cautious, it will not prohibit the plaintiffs or defendants to invoke provisions under Order 18 Rule 17 CPC for just reasonable causes. The cited judgment of Hon'ble Supreme Court does not help to advance the case of the plaintiffs. Going by the factual averments made in the Complaint and the Written Statement and the portions of evidence relied upon by the learned counsel appearing for the petitioners this Court is inclined to hold in favour of the respondents/plaintiffs. Keeping in mind, the purpose and object of Order 18 Rule 17 CPC the Lower Court has exercised its discretion, and the revision petition is filed without any *bona fides*. As a matter of fact, no prejudice is caused to the



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petitioners. The petitioners as a defendants have filed the above Civil Revision Petitions to protract the proceedings without any *bona fides*.

- (13) Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.12.2021

cda

Internet : Yes

To

The XVII Assistant Judge, City Civil Court, Chennai.



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S.S.SUNDAR, J.,

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