

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)No.25 of 2018
and CMP No.74 of 2018

Mercy Margaret

.... Petitioner

Vs

Kandasamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prayed to set aside the fair and decreetal order dated 14.12.2017 passed in I.A.No.80 of 2017 in I.P.No.13 of 2012 on the file of Subordinate Judge, Tiruchengode and allow the same.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.R.Prabakar

ORDER

Challenging the fair and decreetal order passed in I.A.No.80 of 2017 passed in I.P.No.13 of 2012 on the file of Sub Court, Tiruchengode, the respondent in I.P.No.13 of 2012 has filed the above Civil Revision Petition.

2. The respondent in I.P.No.13 of 2012 has filed an application in I.A.No.80 of 2017 to recall P.W.1 for further cross examination.

3.The contention of the revision petitioner is that P.W.1 was cross examined on 15.09.2017 and the same was closed on 27.10.2017. However, within a period of seven days i.e., on 03.11.2017 the revision petitioner has filed an application in I.A.No.80 of 2017 to recall P.W.1 for further cross examination as some important points were left out during the cross examination of P.W.1. However, the Court below refused to entertain the application stating that the petitioner was given several opportunities to cross examine P.W.1 and the matter is pending for several years and the application is filed only to fill up the lacuna. Aggrieved by the said order, the petitioner in I.A.No.80 of 2017 has filed the present revision.

4. Learned counsel for the revision petitioner submits that some vital points are left out during the cross examination of P.W.1 and it is not meant for to fill up the lacuna. Hence the revision petitioner has filed the present revision to set aside the fair and decretal order passed in I.A.No.80 of 2017 and afford

opportunity to cross examine P.W.1.

5.Per contra, learned counsel for the respondent submits that the Court below has given sufficient opportunities and the revision petitioner has not utilised the same. Ultimately, cross examination of P.W.1 was completed on 27.10.2017. Mere for filling up of certain left out points, filing an application to cross examine P.W.1 cannot be permitted and it is a settled law and therefore, the Civil Revision Petition is liable to be dismissed.

6.Heard both sides and perused the materials available on records.

7.It appears that the revision petitioner has filed an application in I.A.No.80 of 2017 before the Subordinate Court, Tiruchengode to recall P.W.1 for further cross examination. Originally, P.W.1 was cross examined on 15.09.2017 and the same was closed on 27.10.2017. Within a period of seven days of closing of cross examination of P.W.1, on 03.11.2021, the revision petitioner has filed an application to recall P.W.1 for further cross examination as some vital points are left out to cross examine.

8.No doubt it is settled law that for filling up the lacuna, to recall any witness for cross examination is not permissible. However, in the present case, it appears to be a case of insolvency filed by the respondent in the revision. The petitioner's contention is that it is not a case of filling up of lacuna for the reasons but for the reasons that a pronote was executed by the revision petitioner in favour of the respondent in some other transaction and in this regard, he wants to cross examine P.W.1.

9.This court feels that in the interest of justice, it is just and proper to allow the revision petitioner to examine P.W.1. However, this Court taking note of the fact that the revision petitioner has taken several opportunities to cross examine P.W.1, this Court directs the revision petitioner to cross examine P.W.1 within ten working days from the date of first hearing immediately after the receipt of the order copy by the Court below. The Court below can fix the date of hearing within one or two hearings subject to the convenience of the Court. Cross examination should be completed within ten days from the date of receipt of order copy. In case, the revision petitioner

has not completed that cross examination of P.W.1 within ten working days, no further adjournments shall be given and final order of adjudication shall be passed within a period of three months thereafter.

With the above observation, the Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

20.01.2021

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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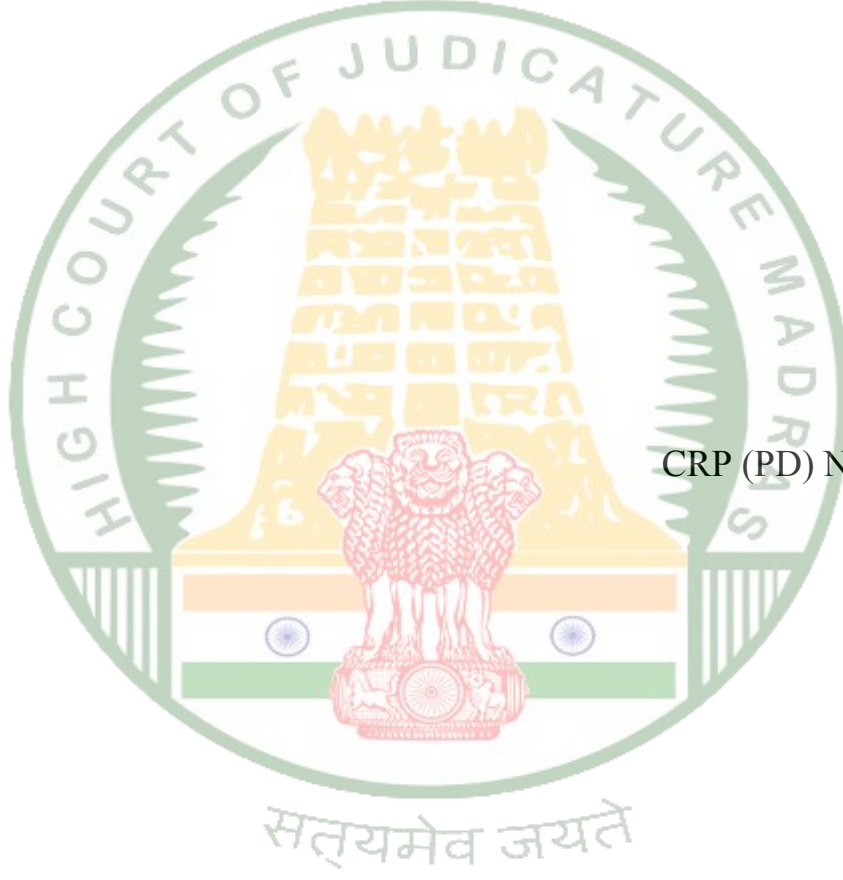
Note: Issue Order copy on 25.01.2021

To:
The Sub Court, Tiruchengode

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KRISHNAN RAMASAMY,J.

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CRP (PD) No.25 of 2018

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