



C.R.P(NPD).No.1587 of 2019

+IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(NPD).No.1587 of 2019
and C.M.P.No.10398 of 2019

N.R.Kandhasamy

... Petitioner

Versus

M.Saravanakumar

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order passed in I.A.No.196 of 2017 in O.S.No.281 of 2016, on the file of the III Additional District Court cum Motor Accident Claims Tribunal, Tiruppur at Dharapuram.

For Petitioner : Mr.S.Mukunthi

For Respondent : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed to set aside the fair and final order passed in I.A.No.196 of 2017 in O.S.No.281 of 2016, on the file of the III Additional District Court cum Motor Accident Claims Tribunal, Tiruppur at Dharapuram.



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2. Heard both sides.

3. The petitioner herein is the defendant in suit O.S.No.281 of 2016 filed by the plaintiff/respondent herein for the recovery of money based upon the promissory note. The said suit is contested by the revision petitioner/defendant herein by filing the written statement denying the said borrower contending that the plaintiff is the stranger. After framing of issues, the suit is ripe for trial and on the side of the plaintiff, the witnesses were examined. PW.1 witness was over, at the time of evidence of PW.1, the defendant filed I.A.No.196 of 2017, under Order 18 Rule 17 of CPC to reopen for further cross examination of PW.1 for the reason that he got certain particulars recently in order to prove his defence and he sought permission of the Court.

4. The learned counsel appearing for the respondent strongly objected by stating that the application has been filed in order to fill up the lacuna. The defendant filed the said application after the completion of PW.1 evidence but the trial Judge dismissed the application stating that at the time of filing of the written statement, the defendant ought to have filed those



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material and documents and during the middle of the trial he is not permitted to file a document which would lead to fill up the lacuna. Aggrieved by that order, the defendant filed this revision.

5. The learned counsel for the revision petitioner submits that the main defence in the suit is that he was not aware of the plaintiff who is residing at Sathyamangalm, Erode District which is far away from his native place. Further he also contended that during cross examination he got some particulars from the mouth of the plaintiff and subsequently he was able to get certain particulars to prove his evidence. So he filed an application to recall the plaintiff along with particulars which necessitate him to cross examine PW.1. Further, the documents which are relied upon are the face book profile and true caller details. Both the particulars are available in the public domain. Those particulars are not created for the purpose of the suit and it is available all time in the face book profile. Therefore, to prove the evidence, the defendant wants to cross-examine the plaintiff further.

6. The learned counsel for the plaintiff/respondent strongly raised objection that after completion of the PW.1 cross examination the



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defendant filed his application which clearly indicates that his intention to fill up the lacuna for which he is not entitled. Though this objection is sustainable one, he is having every right to put forth those facts to the defendant at the time of cross examination. The trial Court is the fact finding Court and all the parties are bound to prove the case with all material evidence. Therefore, fair opportunity should be given to the defendant to defend the case.

7. Therefore, the objection raised at the time of reopening the petition is premature one. Hence, without considering those facts, that the trial Court erroneously dismissed the application which calls for no interference by this Court. Hence, the order passed by the trial Judge is set aside. Accordingly, I.A.No.196 of 2017 is allowed. The trial Judge is directed to dispose the case within a period of three months from the date of this order. Consequently connected Miscellaneous Petition is Closed. No costs.

26.10.2021

Internet : Yes / No

Index : Yes / No

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To
The II Additional District Court cum
Motor Accident Claims Tribunal,
Tiruppur at Dharapuram.



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T.V.THAMILSELVI, J.

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