

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.845 of 2018 and
CMP.No.4676 of 2018

Institute for Financial Management
and Research(IFMR),
Rep. by its Registrar,
No.30, Kothari Road,
Nungambakkam,
Chennai-600 034

..Petitioner

Vs.

S.Ratnakar

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.01.2018 passed in IA.No.16469 of 2017 in OS.No.5965 of 2013 passed by the learned VI Assistant Judge of City Civil Court, Chennai.

For Petitioner : Mr.Mahesh Kumar

For Respondent : Mr.S.Rajendran

ORDER

The Civil Revision Petition is filed to set aside the fair and decretal order dated 11.01.2018 passed in IA.No.16469 of 2017 in

OS.No.5965 of 2013 on the file of the learned VI Assistant Judge of City Civil Court, Chennai, thereby allowing the petition to receive the documents.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for recovery of money. While pending suit, the respondent filed petition to produce certain documents. The said application was dismissed and aggrieved by the same, the respondent preferred civil revision petition before this Court and this Court by order dated 27.09.2017 in CRP.No.1290 of 2015, the petitioner therein was given liberty to make a comprehensive application along with a list of documents so as to enable the petitioner herein to produce it or to express inability. Therefore, again the respondent filed petition to produce certain documents and the same was dismissed. Thereafter, the respondent filed petition seeking to receive the following documents:

S. No	Date	Description of document	Remarks
1	26.03.2008	Offer letter given by IMFR Trust to the defendant	Ex.B1
2	31.03.2008	Request for relieving by the defendant to plaintiff	Ex.B2
3	22.10.2010	Representation / appeal letter by the defendant to plaintiff	Ex.B3

4	26.10.2010	Plaintiff Institute president's approval in the lodgment schedule for PF and Gratuity	Ex.B4
5	30.08.2011	Payment Voucher issued by the Plaintiff to defendant	Ex.B5
6	31.08.2012	Relieving letter from the plaintiff institution to the defendant	Ex.B6
7	31.08.2012	Conduct and service letter from plaintiff to defendant	Ex.B7

The same was allowed. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner submitted that when the respondent was denied on two occasions to produce certain documents through the petitioner and both the applications were dismissed by the trial court, again the respondent come forward with the petition to receive those documents which are sought to be produced by the petitioner. When the respondent filed petition under Order VIII Rule 1(A)(iii), the respondent ought to have stated the reason why those documents were not produced along with the written statement and also to satisfy the court below to receive those documents. Without doing so, the court below mechanically allowed the petition. In this regard, he relied upon the judgment in the case of **Shri Harkesh Singh & another Vs. Shri Ved Raj** rendered in **CM(M) No.945 of 2007** dated 02.02.2010, wherein it is held as follows:

3. Order 7 Rule 14 CPC is in respect of production of documents by the plaintiff along with the plaint. Order 8 Rule 1A requires defendant to produce all documents along with the WS. Order 8 Rule 1A (3) provides that the documents which have not been produced along with the WS cannot be produced in the Court, later on, without the leave of the Court. Order 13 deals with production, impounding and return of documents and provides that the parties to produce all documentary evidence in original before settlement of issues. Order 13 Rule 1(3) CPC makes exception only in respect of those documents which are to be handed over to witnesses for refreshing his memory or to which witness, may be confronted during cross examination. Thus, if any documents are to be produced by a party, the same are to be produced with pleadings. Subsequent production of documents can be done only if the Court is satisfied with the grounds explained for non production of documents.

4. In the present case, the petitioners had not filed the documents along with the WS neither filed a list of documents stating that the documents were relied upon by them but were not in their possession. The only ground stated by the petitioners is that due to inadvertence they did not file the documents. Inadvertence is no ground for allowing an application for production of documents at the stage of evidence. I find no force in the petition. The petition is hereby dismissed.

4. He also relied upon the judgment in the case of **Dewanti Devi and others Vs. Radheshyam Tiwary and others** reported in **2019 SCC Online pat 28**, wherein it is held as follows:

6. Order 8 Rule 1A(3) of the CPC provides that the documents, which have not been produced along with the written statement, cannot be produced to the court later on without the leave of the court. Thus, if a document is to be produced by a defendant, the same is to be produced with the written statement. Subsequent production of document can be done only if the court is satisfied with the grounds explained for non-production of the documents at the time of filing of the written statement.

7. In the instant case, from the application filed by the petitioners before the court below it does not appear as to why the proposed documents, which the petitioners intend to be taken into evidence, were not produced earlier. Similar applications filed by other defendants were dismissed by the court below on 27.08.2012 and 09.10.2014. The repeated applications being filed by the separate sets of defendants for admitting common documents one after another is nothing but a ploy to delay the disposal of the suit.

The High Court of New Delhi held that if the documents are sought to be produced by a party, the same are to be produced with pleadings.

Subsequent production of the documents can be done only if the court is satisfied with the grounds explained for non production of documents.

5. In the case on hand, the respondent filed written statement and he reserved his right to file documents at the time of trial. Though, the respondent was denied seeking production of certain documents from the plaintiff, petition was filed under Order VIII Rule 1(A)(iii) to receive the above said documents to defend the suit. On perusal of the affidavit filed in support of the petition, revealed that the petitioner filed suit for recovery of money towards damages for unlawful misappropriation of fund. The respondent to disprove the claim of the petitioner herein that he has not involved in any misappropriation of funds and the amount granted by the petitioner is only through proper process and procedure adopted by the petitioner institution and also the documents which are sought to be produced supported the claim of the respondent. Therefore, the court below rightly allowed the petition to receive those documents. In fact, the learned counsel for the respondent would submit that the trial has been completed and the suit is posted for arguments and the petitioner was given several opportunity to cross examine DW1 and

even then, the petitioner failed to cross examine defence witnesses and the suit is posted for arguments.

6. Therefore, the respondent categorically stated the reasons and the court below was satisfied with the reasons stated by the respondent and allowed the same. As such, the judgments cited by the learned counsel for the petitioner are not helpful to the case on hand and this Court finds no infirmity or illegality in the order passed by the court below.

7. Accordingly, this civil revision petition is dismissed. However, the petitioner is permitted to cross examine defence witnesses in the manner known to law by filing appropriate application. Consequently, connected miscellaneous petition is closed. No order as to costs.

सत्यमेव जयते

01.07.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

The VI Assistant Judge of
City Civil Court, Chennai.



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