

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM

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

**C.R.P.(PD) No.905 of 2018
and CMP No.4915 of 2018**

A.S.Kameswari
alias Manjula Venkatakrishnan ... Petitioner

Vs.

1.Sri Krishna Tiles and Potteries (Madras) Pvt.Ltd.,
“Kumara Vijayam”, Flat No.A-1, 99,
Royapettah High Road,
Chennai – 600 014.

- 2.N.Kalavathy
3.A.R.Santhanakrishnan
4.Radhika Santhanakrishnan
5.Ajit Santhanakrishnan Ranganthan
Rajagopalan (died)
6.A.K.Muthuswamy
7.A.K.Shankar Prasad
8.S.Krithika
9.S.Srinivasan
10.A.Sankaranarayanan
11.A.R.Chandrika
12.S.Ananth
13.Arunarajan
14.A.R.Lakshmi
15.R.Muthukrishnan

16.R.Raghunandan
17.B.Ramamoorthy
18.R.Shanthi
19.R.Sudha
20.S.Sriram
21.S.Sridhar
22.Umapandian

23.Oriental Bank of Commerce
No.63, Dr.R.K.Salai, Chennai – 4.

24.Rohini Holdings Private Limited
No.67, Chamiers Road, R.A.Puram,
Chennai – 28. ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Code of Civil Procedure, to set aside the fair and decreetal order dated 12.01.2018 made in I.A.No.149 of 2017 in O.S.No.1851 of 2013 on the file of the XVIII Additional Judge, City Civil Court, Chennai.

For Petitioner	:	Mr.H.Karthik Seshadri
For R1, R3 & R4	:	Mr.V.Kuberan for M/s.Rank Associates
For R2 & R5	:	Notice served
For R6 to 21 and R23	:	Given up
For R22	:	Mr.S.Thankasivan

ORDER

This Civil Revision Petition is filed against the the fair and decreetal order dated 12.01.2018 made in I.A.No.149 of 2017 in O.S.No.1851 of 2013 on the file of the XVIII Additional Judge, City Civil

Court, Chennai, thereby allowing the petition to re-open the evidence of the defendants 1, 6 to 10 to let in evidence.

2. The revision petitioner is the plaintiff and the respondents 1 to 5 are the defendants 1, 6 to 10. The petitioner filed a suit for declaration and mandatory injunction. The suit was originally filed before this Court in the year 2005 and thereafter it was transferred to the file of the XVIII Additional Judge, City Civil Court, Chennai and renumbered as O.S.1851 of 2013. When the matter was posted for arguments, the respondents 1 to 5 filed a petition to re-open the evidence to let in evidence and the same was allowed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner would submit that originally the suit was filed in the year 2005 before this Court in C.S.No.288 of 2005 for declaration and mandatory injunction. Subsequently, it was transferred to the file of the XVIII Additional Judge, City Civil Court, Chennai and renumbered as O.S.No.1851 of 2013.

4. P.W.1 was examined in chief and the suit was posted for cross-examination of the respondents 1 to 5 herein on 15.02.2016. After closing the evidence of the petitioner's, the suit was posted for defendants side evidence. The Trial Court had given several opportunities to the respondents 1 to 5 for their evidence on various occasions. Finally, when the suit was posted for evidence on 28.09.2016, the respondents 1 to 5 herein called absent and no representation was made seeking time. Since, already sufficient opportunities were given for their evidence and they are not interested to let in evidence on their side, evidence was closed and suit was posted for arguments on 10.10.2017. Even at that stage, the suit was adjourned on two occasions for arguments. At that juncture, the respondents 1 to 5 filed the present petition on 10.11.2017 to re-open their evidence to let in evidence on their side under Order 18 Rule 17 read with 151 of CPC. Therefore, the respondents did not approach the Court with clean hands and only to drag on the proceedings they filed a petition to re-open the evidence. The petition itself is not maintainable, since, they did not let in evidence on their side and only for re-opening the evidence of the respondents 1 to 6 herein, the present petition had been filed.

5. Without considering the same, the Court below mechanically allowed the petition only for giving an opportunity to let in evidence. In support of his contention, he also relied upon the judgment reported in **2011 11 SCC 275** in the case of **K.K.Velusamy Vs.N.Palanisamy**

6. Per contra, the learned counsel for the respondents submitted that admittedly the respondents did not let in evidence. The petitioners filed a suit for substantial relief and as such, ought to have let in evidence on their side to defend the suit filed by the petitioner in a proper manner. In fact, the prayers sought for in the suit itself are not maintainable. The judgment cited by the petitioner is not at all applicable to the case on hand and only applicable to the case where witnesses were re-called. In the case on hand, the respondents 1 to 5 may be given one more opportunity to let in their evidence. Therefore, the Court below rightly allowed the petition and the respondents 1 to 5 had not let in evidence at any point of time. The respondents 1 to 5 delayed the suit, though the suit was filed in the year 2005 and subsequently it was transferred to the XVIII Additional Judge, City Civil Court, Chennai, but trial commenced only in the year 2016. The

plaintiff's side evidence was closed only on 15.02.2016 and immediately, they filed a petition to re-call their evidence. Therefore, he prayed for dismissal of the Civil Revision Petition.

7. Heard, Mr.H.Karthik Seshadri, learned counsel appearing for the petitioner, Mr.V.Kuberan, learned counsel appearing for the respondents 1, 3 & 4 and Mr.S.Thankasivan, learned counsel appearing for the 22nd respondent and perused the materials available on record.

8. The petitioners are the plaintiffs and the respondents 1 to 5 are the defendants. Originally, the suit was filed in the year 2005 before the Court in C.S.No.288 of 2005 for declaration and mandatory injunction and subsequently it was transferred to the file of the XVIII Additional Judge, City Civil Court, Chennai and renumbered as O.S.No.1851 of 2013. The Trial commenced in the year 2016. The evidence of the plaintiff was closed on 15.02.2016. Thereafter, the suit was posted for defendant's side evidence. The suit was adjourned at the request of the respondents 1 to 5 herein on various dates viz., 28.06.2016, 12.07.2016, 22.07.2016,

01.08.2016, 08.08.2016, 18.08.2016, 30.08.2016, 08.09.2016, 17.09.2016, 23.09.2016, and finally adjourned to 28.09.2016 for their evidence. On 28.09.2016, the respondents 1 to 5 did not let in their evidence and as such, the evidence was dispensed under Order XVII Rule (2)(e) of the Civil Procedure Code. Thereafter, the suit was posted for arguments on 10.10.2017. In fact, the suit was also adjourned for two hearings on 20.10.2017 and 30.10.2017. Even then, the respondents 1 to 5 failed come forward to re-open to let in their evidence. Only on 10.11.2017, they filed a petition to re-open for their evidence.

9. The learned counsel for the petitioner rightly pointed out that the petition was filed under Order 18 Rule 17 read with 151 of the Civil Procedure Code to re-open their evidence. Admittedly, the respondents 1 to 5 did not let in their evidence and as such, no question to re-open their evidence. In this regard, the learned counsel for the petitioner relied upon the Judgment reported in **2011 11 SCC 275** in the case of **K.K.Velusamy Vs.N.Palanisamy**, in which this Court held as follows :

“8. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has

been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. [Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate - 2009 (4) SCC 410].

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

11. There is no specific provision in the Code enabling the parties to re-open the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under section 151 of the Code, subject to its limitations, can be

invoked in appropriate cases to re- open the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.

12. The respondent contended that section 151 cannot be used for re- opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of section 151 has been explained by this Court in several decisions (See : Padam Sen vs. State of UP-AIR 1961 SC 218; Manoharlal Chopra vs. Seth Hiralal - AIR 1962 SC 527; Arjun Singh vs. Mohindra Kumar - AIR 1964 SC 993; Ram Chand and Sons Sugar Mills (P) Ltd. vs. Kanhay Lal - AIR 1966 SC 1899; Nain Singh vs. Koonwarjee - 1970 (1) SCC 732; The Newabganj Sugar Mills Co.Ltd. vs. Union of India - AIR 1976 SC 1152; Jaipur Mineral Development Syndicate vs. Commissioner of Income Tax, New Delhi - AIR 1977 SC 1348; National Institute of Mental Health & Neuro Sciences vs. C Parameshwara - 2005 (2) SCC 256; and Vinod Seth vs. Devinder Bajaj - 2010 (8) SCC 1). We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural

aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely

necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

10. The Hon'ble Supreme Court of India held that to re-call any evidence under Order 18 Rule 17 can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit requesting the Court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify any grounds it may have any evidence letting by the parties.

11. In the case on hand, admittedly the respondents 1 to 5 did not let in their evidence and as such, there is no question of re-calling their evidence. Further, the power under Section 151 or Order 18 Rule 17 of the Civil Procedure Code is not intended to be used routinely, merely for asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trial. But where the application is found to be bonafide and where the additional evidence, oral and documentary, will assist the Court to clarify the evidence on the issues and will assist in

rendering justice, and the Court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion to re-call the witnesses or permit the fresh evidence. Therefore, the Court below ought not to have allowed the petition to re-open for letting the respondents 1 to 5 evidence mechanically. As sought prayer, sufficient opportunities were given to the respondents to let in their evidence. When the suit was posted for arguments, the respondents 1 to 5 filed a petition to re-open their evidence. Admittedly they did not let in their evidence earlier and only to let in their evidence they filed a petition to re-open their evidence. Therefore, the order passed by the Court below is perverse and illegal.

12. Accordingly, the order 12.01.2018 made in I.A.No.149 of 2017 in O.S.No.1851 of 2013 on the file of the XVIII Additional Judge, City Civil Court, Chennai, is hereby set aside. The Trial Court is directed to dispose of the suit within a period of twelve months from the date of receipt of a copy of this order.

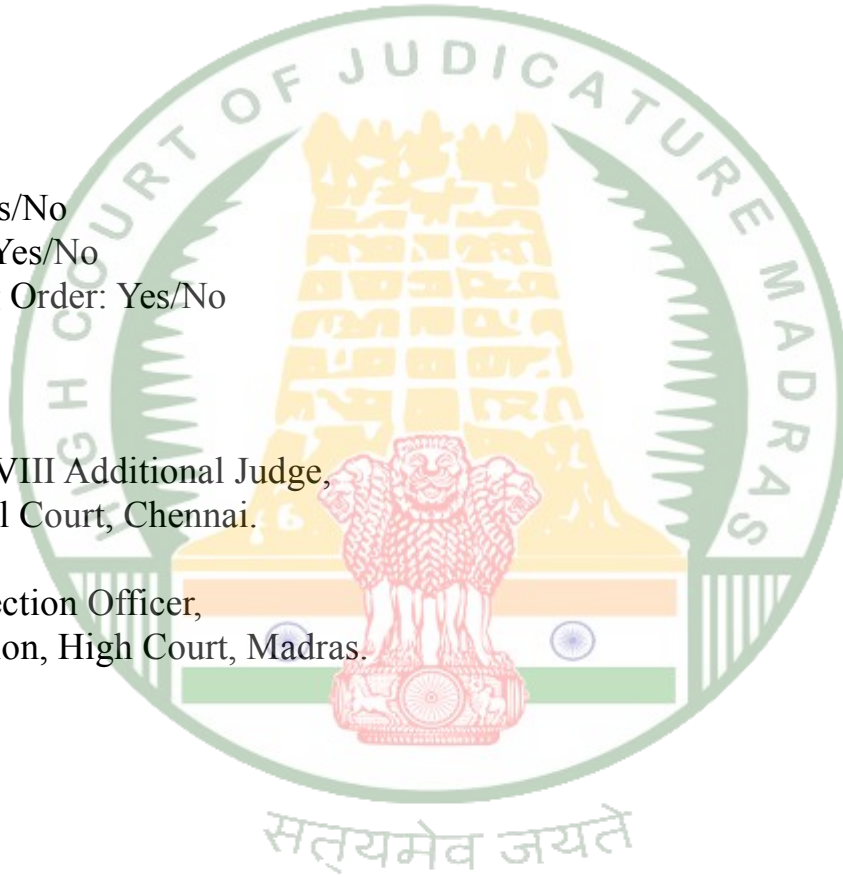
13. With the above directions, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

22.04.2021

Lpp
Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

1. The XVIII Additional Judge,
City Civil Court, Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.



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C.R.P.(P.D).No. 905 of 2018

G.K.ILANTHIRAIYAN.J,

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