

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 02.08.2021	Orders pronounced on 04.08.2021
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Coram

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1467 of 2021
and
C.M.P.No.11542 of 2021

Selvakumar

... Petitioner/plaintiff

Vs

1. V.P.Veerappan

2. Leela

... Respondents/defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.02.2021 passed by the learned Additional District Court, Namakkal in I.A.No.4 of 2020 in O.S.No.68 of 2019 and consequently dismissed the said I.A.No.4 of 2020 in O.S.No.68 of 2019.

For Petitioner ... Mr.P.T.Rakesh

ORDER

This Civil Revision Petition is filed against the order passed by the learned Additional District Judge, Namakkal, in I.A.No.4 of 2020 in O.S.No.68 of 2019 on 08.02.2021.

2. The petition in I.A.No.4 of 2020 was filed under Section 151 CPC by the respondents/defendants stating that the suit in O.S.No.68 of 2019 was filed by the petitioner/plaintiff for the relief of specific performance of contract on the basis of sale agreement dated 14.06.2018. The case of the respondents is that they have not executed any sale agreement in favour of the petitioner. The signature allegedly made by the first respondent is not the signature of the first respondent. The sale agreement is a forged sale agreement. The respondents have not received any advance amount from the petitioner. Therefore, they prayed that the petitioner and the witnesses to the sale agreement had to be examined at the same time. This petition was resisted by the petitioner/plaintiff on the ground that the simultaneous examination of witnesses is applicable only to commercial court. Therefore the respondents prayed for dismissal of this petition.

3. On considering the rival submissions, learned trial Judge held that though there is no specific provisions in the Code of Civil Procedure enabling the party to examine all the witnesses at the same time (on the same day), in some specific cases, in order to ensure fair

trial, such a plea can be considered by the court. In this view of matter, the petition was allowed directing the petitioner herein/plaintiff to examine all the witnesses in support of the suit agreement at the first instance; until then, cross examination of the witnesses shall stand deferred. It is also made clear that as soon as the examination of all the witnesses on the petitioner side is over, the respondents shall cross examine all the witnesses forthwith without seeking unnecessary adjournments. Aggrieved against this order, the petitioner has approached this Court and filed this Civil Revision Petition.

4. Learned counsel appearing for the petitioner submitted that the petitioner is not in a position to say now as to whether he is going to examine one witness or two witnesses; whether he will produce witnesses or the witnesses have to be summoned. When that be the case, order of the learned trial Judge directing the petitioner to examine all the witnesses and then permitting cross examination by the respondents is not workable and against the law. In this regard, he relied on two judgments reported in (1) **MANU/WB/0338/2005 : 110 CWN 266** (The Howrah Motor Company Limited ..vs.. Exide Industries Limited) and (2)

MANU/KA/8540/2006 : AIR 2007 Kant 58 (A.K.Krishna Murthy ..vs.. S.K.Sukumar).

5. Reading of the judgment reported in (1) **MANU/WB/0338/2005 : 110 CWN 266** (*The Howrah Motor Company Limited ..vs.. Exide Industries Limited*) shows that the following questions arose for consideration:-

“(i) *The plaintiff/respondent given liberty to file a Supplementary Affidavit in respect of the witness who had already filed his examination-in-chief by way of affidavit.*

(ii) *The plaintiff has been directed to file further Affidavit Evidence in respect of other witnesses proposed to be called by the plaintiff.*

(iii) *The defendant/appellant has been given liberty to file their Affidavit Evidence in similar fashion within two weeks thereafter even before the cross-examination of the first witness is complete.”*

While considering these questions, the court was of the view that directing the plaintiff and defendants to file Affidavit Evidence before cross-examining the first witness is not a course approved by law.

6. In another case viz., **MANU/KA/8540/2006 : AIR 2007 Kant 58** (A.K.Krishna Murthy ..vs.. S.K.Sukumar), in a similar situation, the court directed the parties to file affidavit in lieu of examination in chief simultaneously. Considering the matter, the Court held that “if the plaintiff has to commence the evidence, he has to file his affidavit or choose to file the affidavit of his witness. He is at liberty to file such affidavit and after cross examination of the witnesses of the plaintiff, if the defendant feels that there is necessity for him to let-in oral evidence, he is at liberty to file the affidavit when the case is set down for the evidence of the defendant, but the defendant cannot be expected to file the affidavit when the case is posted for the plaintiff's evidence.

7. In the case before hand, the respondents/defendants were not directed to file their chief examination by proof affidavit. It is seen from the order, only the plaintiff and his witnesses were ordered to be examined in chief examination and then the cross examination of plaintiff side witnesses would commence. This method of examination was directed for the reason that the respondents had set up a plea of

forgery. The specific case of the respondents is that they had not executed the sale agreement in favour of the petitioner and also they denied the signature in the sale agreement. When that be the case, the holder of the sale agreement and the witnesses to the sale agreement would be cross examined with regard to the date and time of execution of sale agreement, place of execution and as to the attestors, as to the scribe, as to the consideration etc., If the petitioner/plaintiff is cross-examined, petitioner side would be in a position to know the line of cross examination. This would help them to tutor the witnesses and come prepared to face the cross examination. In that case, the element of surprise would be lost. That would put the respondents in a disadvantageous position. Real facts with regard to the sale agreement will not come to light. Therefore, this Court is of the view that directing the petitioner and his witnesses to be examined in chief and then cross examined on the same day would serve the ends of justice. Instead of filing proof affidavit of plaintiff and other witnesses, plaintiff and other witnesses may be examined one by one on the same day. The petitioner may either bring the witnesses to the agreement on his own or he can take summons through the court for their appearance. In any event, the

learned trial Judge is directed to fix the date for examination of the petitioner and witnesses to the sale agreement on the same day and examine them one by one.

8. This Civil Revision Petition is ordered accordingly. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

mra

04.08.2021

Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

To

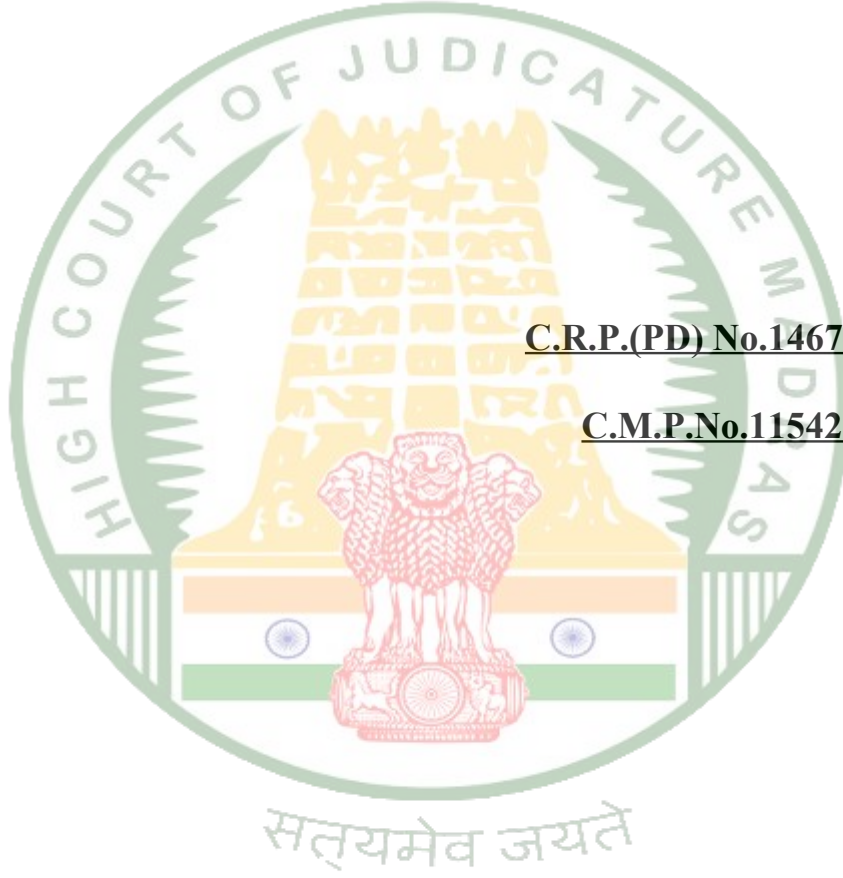
1. The Additional District Judge,
Additional District Court,
Namakkal.



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G.CHANDRASEKHARAN, J.

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order in

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