

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.1949 of 2020

V.R.F.Paul Raj

... Petitioner/ Petitioner / 1<sup>st</sup> Defendant

Vs

1.R.Aruna  
2.Veroncia  
3.K.Elumalai

4.Assistant Divisional Engineer,  
Tamil Nadu Generation and Distribution Ltd.,  
Chengalpattu.

5.The Junior Engineer,  
Tamil Nadu Generation and Distribution Ltd.,  
Chengalpattu

... Respondents 2 to 5 / Respondents 2 to 5 / Defendants 2 to 5

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Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Judgment and Decree passed in I.A.No.3 of 2019 in O.S.No.41 of 2013 by the Principal Subordinate Judge, Chengalpattu dated 23.03.2020 and permit the petitioner to defend the suit.

|                |    |                      |
|----------------|----|----------------------|
| For Petitioner | .. | Mr.J.Antony Jesuraja |
| For R1         | .. | Mr.V.S.Kesavan       |
| For R2         | .. | Mr.K.Ramkumar        |

### ORDER

Heard Mr.J.Antony Jesuraja, learned counsel appearing for the petitioner, Mr.V.S.Kesavan, learned counsel appearing for the 1<sup>st</sup> respondent and Mr.K.Ramkumar, learned counsel appearing for the 2<sup>nd</sup> respondent.

2.This Civil Revision Petition has been filed questioning the order in I.A.No.3 of 2019 dated 23.03.2020 in O.S.No.41 of 2013. The present Civil Revision Petition has been filed by the 1<sup>st</sup> defendant in the said suit. The 1<sup>st</sup> respondent herein is the plaintiff in the suit. The 2<sup>nd</sup> respondent is the 2<sup>nd</sup> defendant in the suit.

3.As a matter of fact, the suit in O.S.No.41 of 2013 had been proceeded to a quite considerable extent. The parties joined issues by filing written statements and the revision petitioner herein in his capacity as 1<sup>st</sup> defendant is contesting the said suit. Issues have also been framed

and the parties had been invited to adduce evidence. Accordingly, the plaintiff had adduced evidence and had also been cross-examined. The evidence on the side of the plaintiff had also been closed. Thereafter, the suit had been posted for recording evidence on the side of the defendants. The revision petitioner / 1<sup>st</sup> defendant now has to lead evidence. He did not come forward to graze the witness box. Therefore, the defendants were set exparte. The matter was then posted for arguments.

4. At this state, the 1<sup>st</sup> defendant filed I.A.No.3 of 2019 seeking to set aside the exparte order dated 15.10.2019. This application was dismissed by the learned Principal Subordinate Judge, Chengalpattu. Since the matter was posted for arguments the learned Judge probably felt that if arguments could be advanced, the entire issues in the suit could disposed of.

5. However, the valuable rights of 1<sup>st</sup> defendant to lead evidence had been curtailed. I am not examining whether such order is right or wrong, I am looking from a wider angle since the object of any trial is to fish out the actual facts which had been pleaded by the parties and to determine whether such facts had been proved or disproved or not proved.

6.For that purpose, evidence of the parties is required. The plaintiff or the defendant may hesitate to come into the witness box. It is however seen that the defendants had cross-examined the plaintiff and but had not grazed the witness box.

7.It would be appropriate that an opportunity is granted to permit the 1<sup>st</sup> defendant to lead evidence and state whatever he wanted to state in the witness box and also subject himself for cross-examination. I therefore hold that it would only be appropriate that the order is set aside and the parties are relegated back to the Trial Court. The order in I.A.No.3 of 2019 dated 23.03.2020 is accordingly set aside.

8.O.S.No.41 of 2013 has to be revived by the learned Principal Subordinate Judge, Chengalpattu and posted for evidence on the side of the defendants. Having obtaining an order from the revision court, a duty is cast on the defendants to lead evidence in the said matter. The learned Judge may conduct the trial on a day to day basis, since the matter is of the year 2013, nearly 8 years old. If adjournments are sought, the learned Judge, may grant a maximum of three working days in between any two adjournments and no two adjournments can be granted for the same

reason. If such method is adopted, then any trial can be controlled by the learned Judge. Following such method, the trial may be proceed with by inviting the defendants to lead evidence and thereafter, calling upon the plaintiff or the other defendant to cross-examine the witness. At any rate, the trial should be completed on or before 31.09.2021.

9. With the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

21.06.2021

Internet: Yes/No  
Index: Yes/No  
smv

To  
The Principal Subordinate Court, Chengalpattu.

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**C.V.KARTHIKEYAN,J.**

Smv



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