

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD). No.1803 of 2021

and C.M.P.No.14014 of 2021

(Through Video Conference)

1. Selvam @ Selvaraj

2. Velmurugan

....Petitioners

Versus

P. Ashok

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.1 of 2020 in O.S.No.657 of 2012 in dated 04.03.2021 pending on the file of the Principal District Munsif at Salem.

For Petitioners : M/s.N.Umapathi

ORDER

This Civil Revision Petition is filed to set aside the order passed in I.A.No.1 of 2020 in O.S.No.657 of 2012 by the learned Principal District Munsif at Salem on 04.03.2021 .

2. I.A.No.1 of 2020 was filed by the respondent / second defendant under Order VIII Rule 9 of the Civil Procedure Code to receive the additional written statement.

3. It is alleged that the suit was originally filed for the relief of permanent injunction and the plaint was subsequently amended for mandatory injunction. The respondent has not raised any defense with regard to the claim of mandatory injunction inadvertently. Therefore, he had to file additional written statement challenging the prayer with regard to the mandatory injunction.

4. This petition was contested by the petitioners alleging that this petition is filed without stating any reason for delay in filing the additional written statement. The examination of the witnesses have been concluded and the case was reserved for judgment. This matter was posted for judgment on 09.12.2019, 13.01.2020, 29.01.2020, 31.01.2020 and 12.02.2020. This petition is filed only to introduce the new theory and to fill up the lacuna. Therefore, the petitioner prayed for the dismissal of the petition.

5. The learned Principal District Munsif, Salem, after considering the rival submissions allowed the petition. Against the said order, this Civil Revision Petition is preferred.

6. The learned counsel for the petitioners reiterated the averments made in the counter filed for the petitioner to receive additional written statement and submitted that no reason was stated for the delay in filing the additional written statement and the petition was filed, when the case is pending for judgment, only to fill up the lacuna and to introduce a new theory.

7. As pointed out by the learned counsel for the petitioners that this suit was filed for the relief of permanent injunction and subsequently, the plaint was amended for including the prayer for mandatory injunction. The written statement was filed only after the amendment was carried out. It is expected that the respondent should have filed the written statement by including his defense, with regard to the claim of mandatory injunction. That was not done. It is claimed by the respondent that by inadvertence, the claim with regard to mandatory injunction was not raised in the written statement and therefore, the additional written statement has to be filed.

8. This petition is primarily allowed for the reason that the respondent should be given an opportunity to raise his defense with regard to the mandatory injunction. Unlike amendment of plaint, the rules with regard to amendment of written statement and filing of subsequent pleadings is liberal.

This has already been decided by the Hon'ble Apex Court for rendering substantial justice to the parties. The parties must be given fair and reasonable opportunity before the Trial Court. If that opportunity is denied on technical grounds of delay, the parties may not get their right decided appropriately and it would occasion the failure of justice.

9. In this view of the matter and the reasons stated by the respondent that due to inadvertence, the respondent has not raised his defense on the plea of mandatory injunction, this Court is of the view that the respondent may be permitted to file the additional written statement. The learned Principal District Munsif, Salem, also considered this aspect and allowed this petition. This Court does not want to interfere with the order of the learned Principal District Munsif, Salem, for the aforesaid reasons and confirms the order of the learned Principal District Munsif, Salem. Accordingly, the **Civil Revision Petition is Dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

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10. However, considering the fact that the suit is of the year 2012 and the case was pending for pronouncing judgment when this petition for receiving additional written statement was filed, the learned Principal District Munsif,

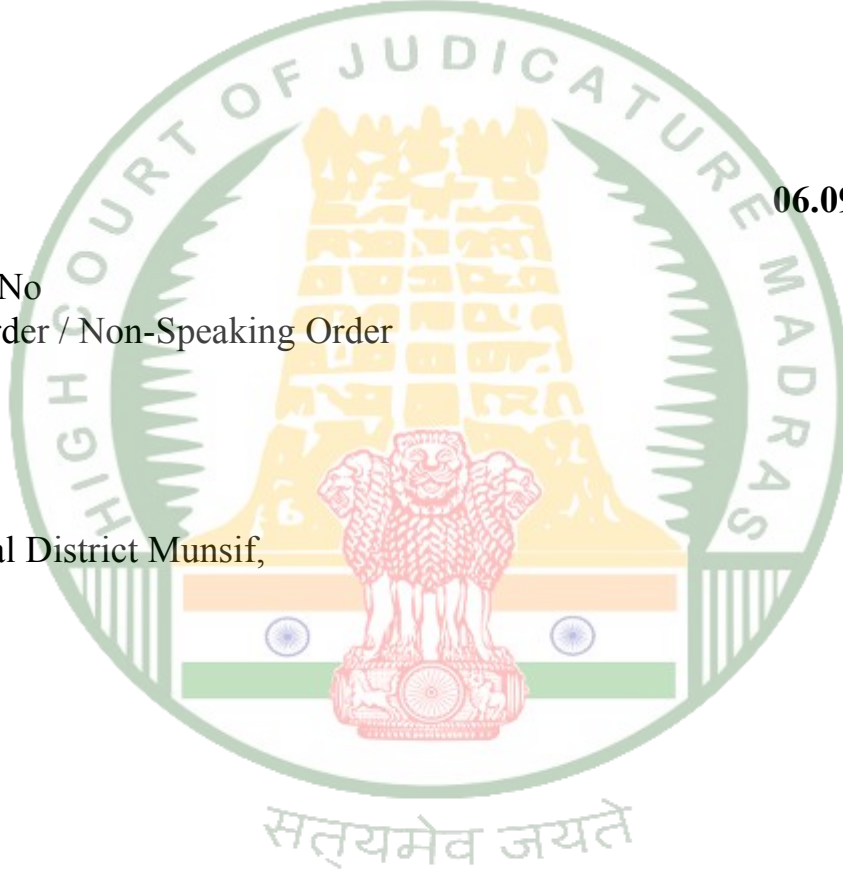
Salem is directed to receive the additional written statement and give opportunity to the petitioner to file reply statement, if any, frame appropriate issues, record evidence, if any, and dispose the suit as expeditiously as possible, preferably within a period of two(02) months from the date of receipt of this order copy.

06.09.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order

sts/jai

To:
The Principal District Munsif,
Salem.



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C.R.P.(PD)No.1803 of 2021

G.CHANDRASEKHARAN, J.,

sts/jai



Order made in
C.R.P.(PD).No.1803 of 2021

Dated:
06.09.2019

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