

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2021

Pronounced on : 06.10.2021

CORAM

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(NPD) No.5005 of 2014

and

M.P.No.1 of 2014

A.Radhakrishnan

... Petitioner

-VS-

A.Prakash

... Respondent

Prayer: Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.09.2014 in I.A.No.4003 of 2014 in I.A.No.6290 of 2013 in O.S.No.6712 of 2007 on the file of the XI Assistant Judge, City Civil Court at Chennai and allow the above revision petition.

For Petitioner : Mr.B.Dayalan

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 19.09.2014 passed in I.A.No.4003 of 2014 in O.S.No.6712 of 2007 on the file of the learned XI Assistant Judge, City Civil Court at Chennai.

2. The revision petitioner herein is the defendant in the suit in O.S.No.6712 of 2007. The said suit was filed by the respondent herein for recovery of possession of the plaint schedule mentioned property. The suit was posted on 18.07.2012 for cross examination of P.W.1. On that date, the respondent/plaintiff did not appear before the Court below and therefore, the suit was dismissed for default on 18.07.2012. Thereafter, an application to condone the delay of 96 days to restore the petition in I.A.No.6290 of 2013 was filed in which it was stated that due to ill health, the respondent/plaintiff could not appear before this Court on 18.07.2012. The said I.A.No.6290 of 2013 was dismissed on the ground that the reasons stated by the respondent/plaintiff for condonation of delay is not acceptable. According to the respondent/plaintiff, I.A.No.6290 of 2013 was filed by his counsel with incorrect particulars and therefore, I.A.No.4003 of 2014 was filed under Order VI Rule XVII and Section 151 of the Code of Civil Procedure to amend the affidavit in I.A.No.6290 of 2013 to enable the respondent/plaintiff to bring to the notice of the Court certain facts, which are borne out of records. The said I.A.No.4003 of 2014 was allowed by the Trial Court on 19.09.2014 permitting amendment of pleadings in I.A.No.6290 of 2013. Aggrieved by the same, the present Civil Revision Petition is filed by the defendant in the suit.

3. According to the learned counsel for the petitioner/defendant, the reasons assigned for the non-appearance of the respondent/plaintiff on 18.07.2012 was nothing but his illness. It is not a pleading but narration of certain facts, which cannot be permitted to be amended by the Court below. The application in I.A.No.4003 of 2014 itself is not maintainable, however, the trial Court allowed the said application and permitted amendment to be carried on in I.A.No.6290 of 2013. In any event, invoking the provisions contained under Order VI Rule 17 of CPC to make amendments in the narration of facts set out in I.A.No.6290 of 2013 is improper and it ought not to have been permitted by the Court below. The I.A.No.6290 of 2013 was filed by none other than the counsel engaged by the respondent/plaintiff and after considering the pleadings thereon, it was dismissed by the trial Court on 18.07.2012. Whiles, by permitting amendment in I.A.No.6290 of 2013, it would amount to recalling the order dated 18.07.2012 which is legally impermissible. It is also submitted that it is the duty of the parties as well as the pleader engaged by him to file affidavits in accordance with the Rules to assist the Court in administration of justice and any misrepresentation of facts cannot be permitted to be amended at a later stage. In the present case, the respondent/plaintiff blamed his own counsel for making certain facts and such narration of facts cannot be permitted to be altered at a later stage.

The learned counsel for the revision petitioner/defendant therefore prayed for setting aside the order passed by the trial Court and to allow the Civil Revision Petition as prayed for. The learned counsel for the petitioner/defendant would submit that the affidavit once filed cannot be amended and placed reliance on the rulings reported in 1989 Civil Law Journal 715.

4.On the above contention, this Court heard the learned counsel for the respondent/plaintiff, who has submitted that the respondent/plaintiff intended to genuinely bring to the notice of the Court certain facts which are germane and necessary for adjudication of the application in I.A.No.6290 of 2013 filed under Section 5 of the Limitation Act and to set aside the order of dismissal dated 18.07.2012 passed in the suit filed by him. The approach of the respondent/plaintiff in bringing to the notice of the Court correct particulars has to be appreciated. In fact, the trial Court, considering the genuine attempt made by the respondent/plaintiff has allowed the application in I.A.No.4003 of 2014 in the interest of justice. Such an order passed by the Court below need not be interfered with and he prayed for dismissal of the Civil Revision Petition.

5.Heard the learned counsel for the Civil Revision Petitioner as well as the learned counsel for the respondent and perused the materials on record.

6.The respondent herein, as plaintiff, has filed the suit in O.S.No.6712 of 2007 for a direction to quit and deliver the vacant possession of the suit “B” Schedule property against the revision petitioner/ defendant. On 18.07.2012, the suit was posted for cross examination of the respondent/plaintiff, on which date, he did not appear and therefore, the suit was dismissed for default. To set aside the order dated 18.07.2012, an application in I.A.No.6290 of 2013 was filed with delay of 96 days in filing the application to petition set aside the order of dismissal. The reasons stated in the affidavit filed in support of I.A.No.6290 of 2013 is that the respondent/plaintiff was unwell. After filing of counter by the petitioner herein about the FIR registered against the respondent, the respondent herein filed a petition in I.A.No.4003 of 2004 to amend the pleadings in I.A.No.6293 of 2013 by stating that on 18.07.2012 when the suit was taken up for hearing, he was arrested and remanded to judicial custody in connection with a murder case. Therefore, the reasons stated in the affidavit in I.A.No.6290 of 2013 that the respondent is unwell is factually incorrect. The fact remains that on 18.07.2012, the respondent was in judicial custody. The trial Court, considering the First Information Report dated 03.06.2012 registered against the petitioner and the newspaper publication dated 04.06.2012 prima facie satisfied that the respondent was in judicial custody on

18.07.2012 and therefore, he could not appear before the Court for the purpose of subjecting himself to cross examination. The Trial Court allowed the petition on cost by observing that the petitioner is illiterate and for auction of the counsel who drafted the petition to illiterate the petitioner should not suffer. In such circumstances, having regard to the admitted facts, as stated above, the trial Court had rightly come to the conclusion that permitting the respondent/plaintiff to amend the pleadings and/or narration of facts in I.A.No.6290 of 2013 would be proper. The rulings reported in *1989 Civil Law Journal* 715 submitted by the learned counsel for the petitioner is not applicable to the present case on hand. Accordingly, to render substantial justice, the trial Court has passed the order dated 19.09.2014 and it does not call for any interference by this Court.

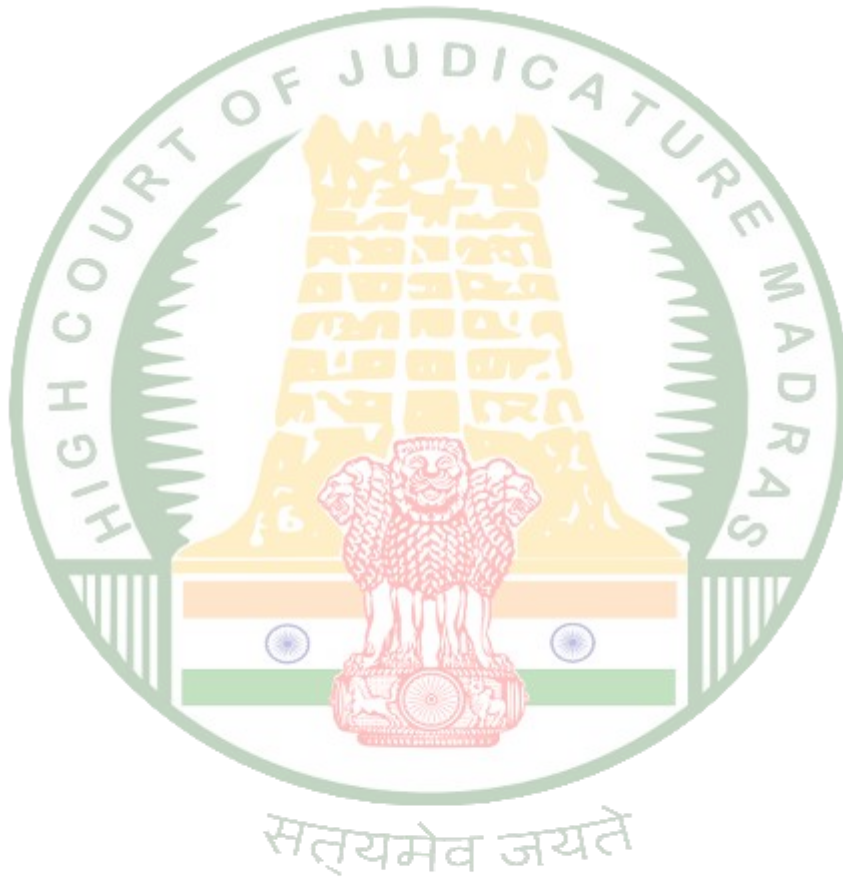
7.In the result, the Civil Revision Petition is dismissed by confirming the order dated 19.09.2014 passed in I.A.No.4003 of 2014 in I.A.No.6290 of 2013 in O.S.No.6712 of 2007 on the file of the learned XI Assistant Judge, City Civil Court, Chennai. Consequently, the connected Miscellaneous Petition is closed. No costs.

06.10.2021

Index : Yes/No
Internet: Yes/No
rm/ssi

To:

1.The XI Assistant Judge,
City Civil Court, Chennai.



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S.KANNAMMAL,J.

rm/ssi



Pre-delivery order in
C.R.P.(NPD) No.5005 of 2014 and
M.P.No.1 of 2014

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