

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) Nos.2114 and 2135 of 2021

and C.M.P.No.16199 of 2021

M.A.Govindaraj

... Petitioner in
both C.R.P.Nos

Vs.

R.Jamuma

... Respondent in
both C.R.P.Nos

Civil Revision Petitions are filed under Article 227 Constitution of India to call for the records of the impugned common order and Decrees dated 28.07.2021 dismissing I.A.Nos.1 and 2 of 2020 and O.S.No.499 of 2016 on the file of the learned I Additional Sub Ordinate Court, Salem and set aside the same.

For Petitioner in both C.R.Ps : Mr.M.Ramamoorthi

For Respondent in both C.R.Ps : Mr.Hari babu

for Mr.T.Shanmugam

O R D E R

C.R.P.No.2114 of 2020 is filed challenging the order passed in I.A.No.1 of 2020 and C.R.P.No.2135 of 2020 is filed challenging the order passed in I.A.No.2 of 2020 in O.S.No.499 of 2016 on the file of the I Additional Sub Ordinate Court, Salem, on 28.07.2021.

2.The learned counsel for the petitioner submitted that P.W.4 was not cross examined and the case was posted for his cross examination on 22.01.2020. It is submitted that the petitioner was not well and was suffering from diarrhoea from 07.03.2020 and hence he was taking treatment and bed rest and could not give instructions to his advocate and therefore, P.W.4 was not cross examined. The evidence of P.W.4 was closed and the case was posted for arguments on 17.03.2020.

3.The learned counsel for the petitioner submitted that there are some mistakes with regard to dates mentioned in the affidavit dates from which he was suffering from diarrhoea. However, the fact remains that the petitioner was not well and he was not able to give instructions to his counsel for facilitating cross examination of P.W.4. The learned counsel prays that the petitioner may be given one more opportunity to cross examine P.W.4 and to

proceed with his evidence so as to participate in the trial. The learned counsel for the respondent opposed this petition on the ground that inspite of giving sufficient opportunities, the petitioner has not chosen to cross examine P.W.4.

4.Considered the rival submission of the learned counsel for the petitioner and the respondent and also perused the materials available on record.

5. It appears from the order that the evidence of P.W.4 was closed and then, the case was posted for arguments on 17.03.2020. It is not known as to whether any opportunity was given to the defendant to produce his side of evidence. It is not advisable to hear the arguments of the parties without giving reasonable opportunity for the parties to produce their evidence. In this case, it was held that P.W.4 was not cross examined. The reason stated by the petitioner is that the petitioner was not well and he could not instruct his counsel. Taking into consideration, submissions of the learned counsel for the petitioner as true and at the same time, considering the laxity with which the petitioner prosecuted the case, this Court is of the considered view that both the applications can be allowed by compensating the respondent with costs and by setting time line for examination of the witnesses and dispose of the case. In

such a view of the matter, the order of the learned trial judge is set aside. The petitions for reopening the case for cross examination of P.W.4 are allowed on payment of costs of Rs.5000/- by the petitioner to the respondent herein. The learned trial judge is directed to fix a date for cross examination of P.W.4 and further witnesses if any, on the side of the plaintiff and then examine the witnesses on the side of the defendant and conclude the trial as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

6. Accordingly, these Civil Revision Petitions stand disposed of. Consequently, connected miscellaneous petition is closed.

30.09.2021

Index: Yes / No
Speaking order / Non speaking order
vsn

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Copy To:

The I Additional Sub Ordinate Court,
Salem

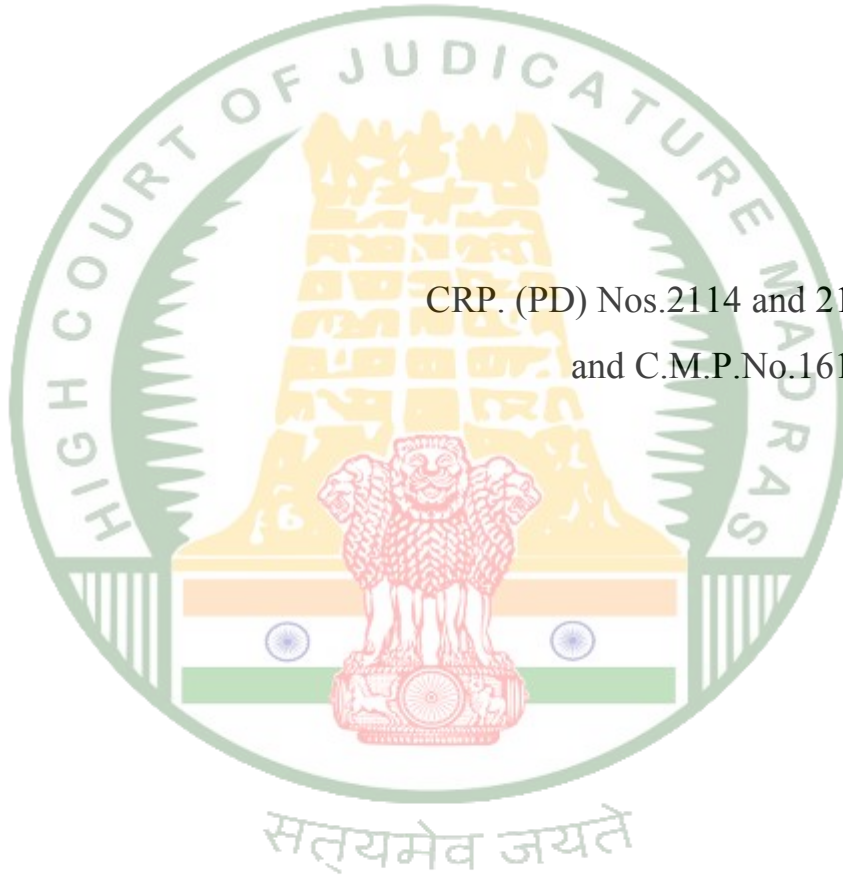


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CHANDRASEKHARAN. J.,

vsn



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