

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.3178 of 2019
and
C.M.P. No.20711 of 2019

J.G. Shelters (Madras) LLP
Represented by its Managing Director,
Mr. D. Nandakumar
No.105A, Old Trunk Road,
Pallavaram, Chennai - 600 043. ... Petitioner

Vs.

1. Sagayi Leather Trading Company,
Rep. by its partners,
2. R. Riyaz Ahmed
3. R. Rafi Ahmed
4. R. Mustaq Ahmed
5. R. Shafeeq Ahmed ... Respondents

Prayer: This Civil Revision Petition filed under Article 227 constitution of India seeking for to set aside the fair and decreetal order dated 25.07.2019 in M.P. No.139 of 2019 in R.C.O.P. No.41 of 2006 on the file of the Principal District Munsif, Alandur.

For Petitioner ... Mr.Ravikumar
(For Paul and Paul)

For Respondents ... Mr. G. Mutharasu

ORDER

This Civil Revision Petition under Article 227 constitution of India seeking for to set aside the fair and decreetal order dated 25.07.2019 in M.P. No.139 of 2019 in R.C.O.P. No.41 of 2006 on the file of the Principal District Munsif, Alandur.

2. The case of the petitioner is that the petitioner filed R.C.O.P No.41 of 2006 on the file of the District Munsif, Alandur, seeking for to direct the respondents herein to quit and deliver vacant possession of the petition premises and put the petitioner herein in possession of the same. During the trial, the petitioner was examined as P.W1 and partly cross examined by the respondent's counsel. In such circumstance, the petitioner has filed M.P. No.139 of 2019 in R.C.O.P NO.41 of 2006 on its file to appoint an Advocate Commissioner to record petitioner's cross examination further at his Residence since he is suffering from Ischemic Stroke and undergoing treatment as in-patient in the Hospital. However,

the Court below have not considered his submissions and dismissed the petition by order dated 25.07.2019. Hence, the Civil Revision Petition.

3. The learned Counsel appearing for the petitioner would submit that the learned Judge has dismissed the petition without considering the medical evidence filed by the petitioner herein and bona-fide reasons stated therein. Since the petitioner cannot carry out his activity daily living independently and needs significant support for the same, the petitioner is not in a position to attend the court for his cross examination. Hence, the petitioner has filed M.P. No.139 of 2019 to appoint an Advocate Commissioner to record the petitioner's cross examination at his residence. But, the the learned Judge without appreciating the bona-fide reasons submitted by the petitioner, in stead of allowing the petition, dismissed the same holding that the Advocate Commissioner cannot be appointed to record the cross-examination of the P.W.1. And the effective role of the Court cannot be given to the Advocate Commissioner. It has been further submitted that as per this Court direction a medical certificate of Mr. D. Nandakumar, dated 13.02.2021, issued by Mr.Dr.G.Shanmugasundar, MD DM (PGI,

Chandigarh) from Magna Centres for Obesity Diabetes and Endocrinology has been produced for the kind perusal and consideration before this Court.

4. The learned counsel for the respondents would submit that since the petitioner has produced the medical certificate of Mr.D. Nandakumar, with regard to his health condition, there is no serious objection in appointing an Advocate Commissioner to record the Cross Examination of P.W.1/petitioner herein along with proper police protection. He has further submitted that cross examination of P.W.1 would have been recorded for 5 days on any working days subject to health condition of the petitioner herein.

5. Heard, the learned counsels on either side and perused the material available on record.

6. Having taken into consideration the submissions made by the learned counsel for the petitioner and the medical certificate of Mr.D. Nandakumar wherein Dr. G. Shanmugasunar MD DM (PGI, Chandigarh)

from Magna Centres for Obesity Diabetes and Endocrinology, has certified the health condition of the petitioner as under:

” This is to certify that Mr.D. Nandakumar S/o. Mr. V. Durairaj aged 68 years male, was seen by me on 13.02.2021 and was found to be suffering from Post Cerebro-Vascular accident/stroke sequelae causing impaired mobility and he is almost bed-ridden. He requires assistance for ambulation/walking and other activities of daily life. Also considering Covid-19 pandemic and his co-morbidity, he should avoid exposure to outside people as much as possible.”

this Court is of the view that as the petitioner herein is a bed-ridden condition, the Court below shall appoint an Advocate Commissioner to record the Cross examination of the P.W.1 and grant police protection to the Advocate Commissioner and the learned counsel for the respondent at the time of the cross examination. Further it is directed that the record of the cross examination shall be reported before the Court below then and there without any delay. At the request of the learned counsel for the respondent herein, he has been granted five days for cross examination of

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lbm

P.W1 on any working days and no further time was granted thereon. If any medical urgency arises to the petitioner during the cross examination, the Court below shall consider to give further opportunity to the learned counsel for the respondent to continue his cross examination subject to the health condition of the petitioner herein.

7. With the aforesaid directions, this Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

04.03.2021

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Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

To:

The Principal District Munsif, Alandur.

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