

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.3412 of 2017

Sri Venkataramana Cotton Mills

Represented by its Proprietor

Sri.Magam Ravi

S/o.Magam Pullaiya

Represented by its Power Agent

M.Nagasudarasan

S/o.Subramaniam

Old No.102, New No.108

Periyasamy Road West, R.S.Puram

Coimbatore – 641 002.

... Petitioner

Vs.

1.Sri Kannapiran Spinning Mills

Represented by its Partner Sri.Devarajan

S/o.Karuppa Konar (late)

2.Sri Devarajan

3.Manoranjitham

4.D.Suresh Babu

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 13.07.2017 made in I.A.No.470 of 2017 in O.S.No.584 of 2011 on the file of I Additional District Court, Coimbatore.

For Petitioner : Mr.C.R.Prasanan  
For R1 : Mr.S.Thangavel  
For R2 to R4 : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

Civil Revision Petition is filed against the fair and decretal order dated 13.07.2017 made in I.A.No.470 of 2017 in O.S.No.584 of 2011 on the file of I Additional District Court, Coimbatore.

2.The petitioner is the plaintiff and the respondents are the defendants in O.S.No.584 of 2011 on the file of I Additional District Court, Coimbatore. The petitioner filed the said suit for recovery of money for the goods supplied to the respondents. The 1<sup>st</sup> respondent is the partnership firm. The 2<sup>nd</sup> respondent filed written statement and the

same was adopted by the respondents 1 and 3. The trial commenced. The petitioner let in evidence and closed their side. The respondents examined an Accountant as D.W.1 stating that he is aware of the facts and he was cross-examined by the counsel for the petitioner. After cross-examination of D.W.1 by the counsel for the petitioner, the 2<sup>nd</sup> respondent filed proof affidavit to examine himself as D.W.2. The petitioner filed the present I.A.No.470 of 2017 under Order XVIII Rule 3-A read with Section 151 of C.P.C. contending that when a party to the suit wishes to give evidence, he must be examined before any other third party is examined. A party can file an application under Order XVIII Rule 3-A of C.P.C. seeking permission from the Court to examine himself after examining the third party. Unless the Court grants such permission, the party cannot examine himself after examining third party as first witness. Based on these averments, the petitioner filed present I.A.No.470 of 2017 for a direction to hold that evidence of alleged witness Devarajan is not admissible and barred under Order XVIII Rule 3-A of C.P.C.

3.The respondents filed counter affidavit and stated that the 1<sup>st</sup> respondent is a partnership firm and all the amounts due to the petitioner are paid. D.W.1 is Accountant of the 1<sup>st</sup> respondent firm and hence he is not a third party. The 2<sup>nd</sup> respondent is a partner of the 1<sup>st</sup> respondent firm, both D.W.1 and D.W.2 are not different entities and both of them are giving evidence on behalf of the partnership firm and hence, Order XVIII Rule 3-A of C.P.C. is not applicable, the application is not maintainable and prayed for dismissal of the said I.A.

4.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the I.A.

5.Against the said fair and decretal order dated 13.07.2017 made in I.A.No.470 of 2017 in O.S.No.584 of 2011, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner contended that the learned Judge failed to see that as per Order XVIII Rule 3-A of

C.P.C., a party must examine himself first and without obtaining permission to examine himself at later stage, he is not entitled to give evidence after examining third party as first witness. The purpose of Order XVIII Rule 3-A of C.P.C. is to ensure fair trial and the Court by recording reason can permit a party to examine himself as witness after examining any party as first witness. The respondents have not filed any application under Order XVIII Rule 3-A of C.P.C. seeking permission to examine the 2<sup>nd</sup> respondent as witness after examining any party. The 2<sup>nd</sup> respondent filed proof affidavit as D.W.2 only to fill in lacunae, the same cannot be permitted and prayed for allowing the Civil Revision Petition. The learned counsel for the petitioner in support of his contentions, relied on the following judgments:

**(i)1987 TNLJ 340 (V.Jayakannan and 3 others vs. V.K.Sampath alias V.K.Sampath Kumar);**

“Rule 3-A expressly provides that, if a party wishes to appear as a witness, then he shall so appear before any other witness on his behalf has been examined. If he wants to reserve himself as a witness

and he proposes to examine himself after other witnesses are examined, that is undoubtedly permissible but he has to obtain previous permission of the Court and the Court has undoubtedly the discretion to grant such permission, but before that discretion is exercised in favour of the party, the Court must record reasons for permitting a party to examine himself after the other witnesses are examined. ...”

(ii) **AIR 1990 Madras 237 (Ayyasami Gounder and others vs. T.S.Palanisami Gounder);**

“6. ... When the provision contemplates the obtaining of permission from that Court for the later examination of a party as a witness, it is clear that such permission should be applied for and sought prior to the commencement of the evidence on the side of the party not seeking permission, as the non-obtaining of such permission at that stage would result in a breach of O.XVIII, R. 3-A of the Code and to say that O. XVIII, R.3-A of the Code could be resorted to even after the examination of other witnesses on behalf of the party to the suit, would be to render that provision a

dead-letter. The resort to O. XVIII, R.3-A of the Code, after other witnesses are examined on behalf of a party seeking permission for the examination of a party thereafter, would defeat the very purpose of the rule that the party should be examined first as a witness and the other witnesses later. The requirement that the party shall appear before any other witness on his behalf has been examined, shows that in all cases, the party should be examined first before the other witnesses and only in very exceptional cases, subject to the grant of permission by Court, he could be permitted to appear as a witness at a later stage. ....”

(iii) **2008 (1) CTC 36 (Ravi and another vs. Ramar);**

“20. ... the Court is required to consider the matter in its proper perspective and is required to find out as to why the party could not examine himself at the beginning and also as to why the application for seeking such permission was not filed at the threshold. If the Court finds that the party deliberately held himself back with a view to fill-up the lacunae in the

evidence at a later stage, obviously such permission is to be refused irrespective of the fact whether permission is sought for at the threshold or at a later stage. If convinced on such aspects, the Court may permit the party to examine himself as a witness at a later stage. What is important is recording of reasons and obviously it means reasons which are germane to the matter, that is to say, relevant for the purpose.”

(iv) **2008 (6) CTC 229 (M.Kumar vs. S.Subbiah Kone and Shiek Mohammad);**

“18. As per the Division Bench of this Court, the permission could be granted even at a later stage by the Court, provided genuine reasons should have been adduced in the affidavit for seeking the relief under Order 18, Rule 3-A, CPC and the duty is cast on the Court to record its reasons. It must be specifically averred in the affidavit that for what reason, he could not examine himself before the witness was examined and the Court should get satisfied with the reasons and the said satisfaction should be revealed in writing.

.. ..

.. ..

25. Adverting to the allegations contained in the affidavit filed by the first respondent, it is bereft of the reasons as to the necessity of the first respondent to examine the power of attorney before he was examined. The only reason available thereon is that in order to comply with the legal requirements, the petition is being filed. But the trial Court has observed in its order that since the plaintiff was ill, he had authorised his power of attorney to file the suit and that might be considered as a reason for filing this application. The said observation is not at all sustainable for the reason that at the time of trial what has prevented the plaintiff from examining himself at the first instance, has to be specifically pleaded him and the same has to convince the Court also. The law requires the Court to record its reasons for permitting the party to examine himself at a later stage. Any deviation in this regard shall render the permission granted by the Court, an invalid one and the said order would get vitiated in view of the absence of recording proper reasons by the Court.”

**(v) 2010 (6) CTC 716 (S.Ramachandra Reddy and another vs.**

**Natarajan and others);**

“5. A reading of Order 18, Rule 3-A of CPC would make it clear that where a party wishes to examine any witness before examining himself he has to obtain the permission of the Court. Such permission can be sought for even after examining the witnesses as held by the Division Bench of this Court in the Judgement reported in the matter of Ravi & another vs. Ramar, 2008 (1) Law Weekly 1055; and in the Judgement reported in the matter of Chennimalai vs. Alagulakshmi, 2008 (4) CTC 490, also the same position has been reiterated. But without filing an application, it is not open to the party to examine himself after the examination of witnesses. Though in this case no such application was filed, the Court below dismissed the application for appointment of Commissioner on the ground that a permission ought to have been obtained before the commencement of the examination of other witnesses on behalf of the party for seeking permission. As stated supra, as per the Division Bench of this Court in the Judgement reported

in 2008 (1) LW 1055, this Court has held as follows:

"As observed in the various decisions and more particularly in the decisions of the Division Benches of Punjab & Haryana, Jammu & Kashmir, Patna and Orissa High Courts, what is necessary is that before giving such permission, the Court is required to give reasons and obviously the reasons must be relevant. However, to lay down as an inexorable rule that in no case such an application can be filed after the examination of any other witness may result in injustice. "

Therefore, what is necessary is to file an application for permission and it is not necessary that such application should be filed before the commencement of examination of the witnesses."

7.The learned counsel appearing for the 1<sup>st</sup> respondent contended that D.W.1 is a representative of the 1<sup>st</sup> respondent partnership firm. D.W.2 is the partner of 1<sup>st</sup> respondent and also 2<sup>nd</sup> defendant in the suit. Order XVIII Rule 3-A of C.P.C. is directory in nature and leave can be obtained subsequently also and prayed for dismissal of the Civil Revision Petition. In support of his contentions, the learned counsel appearing for

the 1<sup>st</sup> respondent relied on paragraph 18 of the judgment reported in **2008 (6) CTC 229 (M.Kumar vs. S.Subbiah Kone and Shiek Mohammad)**, which is relied on by the learned counsel appearing for the petitioner. Further, he relied on the following order dated **06.11.2014** made in **C.R.P.(PD)No.1597 of 2011 [Anusuya and another vs. Roselin Mary]**:

“5. ... However, this court feels that the ends of justice can be met with by giving an opportunity to the petitioners to seek permission by filing a petition under Order 18 Rule 3A of CPC before the trial court, in which event, the trial court shall consider and dispose of the same and then proceed with the further trial of the case.”

8. In reply to the arguments of the learned counsel appearing for the 1<sup>st</sup> respondent, the learned counsel for the petitioner submitted that if the respondents file an application under Order XVIII Rule 3-A of C.P.C., liberty may be granted to the petitioner to file their objections and oppose the same.

9.Though notice has been served on the respondents 2 to 4 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

10.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1<sup>st</sup> respondent and perused the entire materials available on record.

11.The issue to be decided in the present Civil Revision Petition is whether the party to the suit is to be examined first as a witness before any other party is examined as witness. As per Order XVIII Rule 3-A of C.P.C., a party to be examined first before any other party witness. At the same time, as per Order XVIII Rule 3-A of C.P.C., a party can obtain permission to examine himself at later stage after first examining any other party witness. The Courts have held that the provisions of Order XVIII Rule 3-A of C.P.C. is directory in nature and not mandatory. In the judgment relied on by the learned counsel appearing for the petitioner reported in **2008 (1) CTC 36 cited supra**, it has been held that even after

examining any other party, a party to the suit can file an application for permission to examine himself after examining any other party as witness at first. The Court must consider the averments in the affidavit and must record reasons and the said reasons must be relevant. In the judgment reported in **2010 (6) CTC 716** cited *supra* relied on by the learned counsel for the petitioner, this Court after referring to the judgments reported in **2008 (1) CTC 36 (Ravi and another vs. Ramar)** and **2008 (4) CTC 490 (Chennimalai vs. Alagulakshmi)** held that a party can obtain leave subsequently also.

12.In view of the above, the impugned order of the learned Judge is liable to be set aside and is hereby set aside. It is open to the respondents to file application before the trial Court seeking permission to examine the 2<sup>nd</sup> respondent as D.W.2 and it is open to the petitioner/plaintiff to file objection. The learned Judge is directed to consider the averments in the affidavit, counter affidavit made in the application and pass orders on merits and in accordance with law.

13.With the above directions, the Civil Revision Petition is  
disposed of. No costs.

22.10.2021

Index : Yes/No

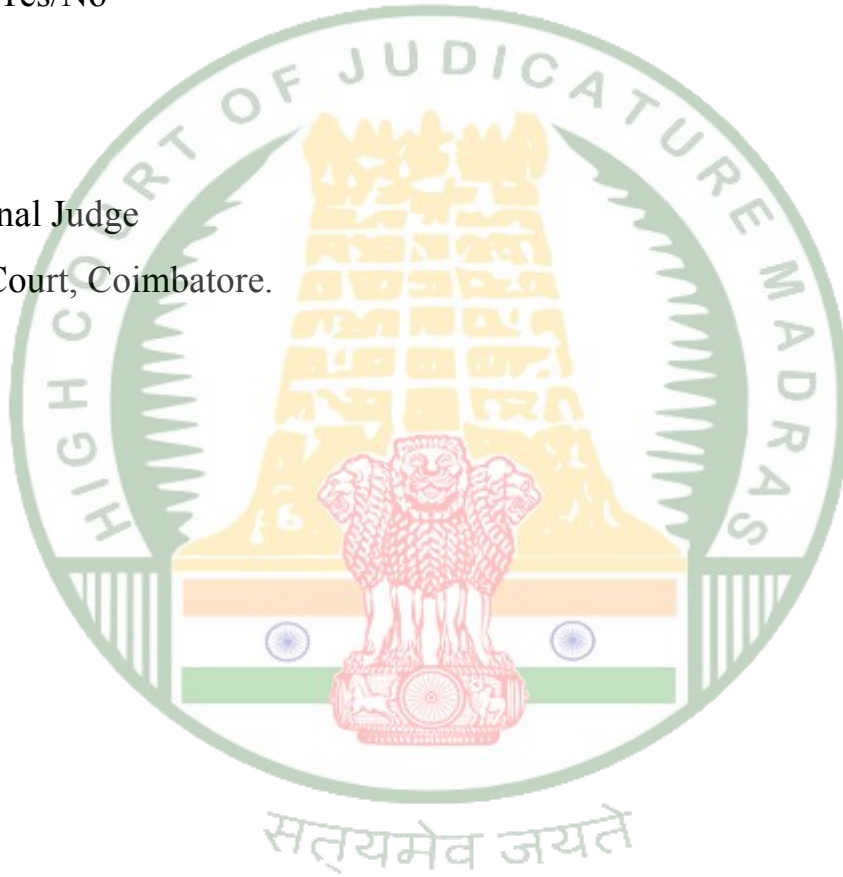
Internet: Yes/No

kj

To

I Additional Judge

District Court, Coimbatore.

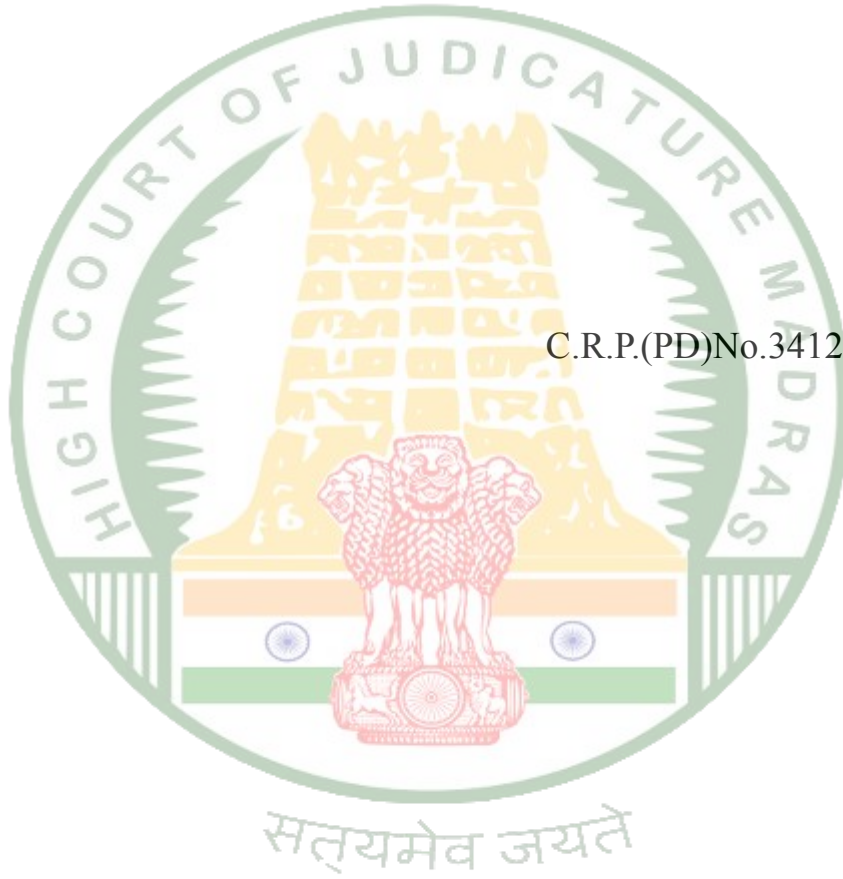


WEB COPY

C.R.P.(PD)No.3412 of 2017

**V.M.VELUMANI,J.**

Kj



C.R.P.(PD)No.3412 of 2017

22.10.2021

WEB COPY