

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)Nos.3674 & 3676 of 2019

and C.M.P.No.24163 of 2019

(Through Video Conference)

Narendra Kumar Pincha

.. Petitioner in both C.R.P.'s

Versus

S. Shakunthala Gulecha

..Respondent in both C.R.P.'s

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the orders dated 03.10.2019, made in I.A.Nos. 1 & 2 of 2019 respectively, in O.S.No. 3622 of 2004, pending on the file of Learned XVII Assistant Judge, City Civil Court, Chennai.

In both cases:

For Petitioner : Mrs.G.Sumitra

For Respondent : Mr.T.Srikanth

COMMON ORDER

Since the issue involved in both the Civil Revision Petitions are one and the same, they are disposed of by this common order.

2. These Civil Revision Petitions are filed against the orders passed in I.A.Nos.1 & 2 of 2019 in O.S.No.3622 of 2004. I.A.No.1 of 2019 was filed for the reopening the case and I.A.No.2 of 2019 was filed for recalling D.W.1 for further cross examination. The affidavit filed in support of these petitions show that the respondent's advocate Mr.B.Ananthakrishnan was 95 years old and he was not attending the Court. He changed his advocate and found from the deposition of D.W.1 that several important questions were omitted to be asked. Therefore, it is necessary for recalling D.W.1 for the purpose of further cross examination.

3. These petitions were contested by the petitioner alleging that the respondent earlier filed I.A.Nos.4359 to 4361 of 2007 seeking to reopen the case for recalling D.W.1 for hand writing test, to summon and examine the hand writing expert. These applications have been dismissed. Again the respondent had filed I.A.No.6304 of 2008 and under Order XVIII Rule 17 of the Civil Procedure Code, seeking direction to the petitioner to produce his account maintained by him to prove the hand writing. This application was also dismissed. Against the dismissal of the order passed in I.A.No.6304 of 2008,

the respondent preferred a civil revision petition in C.R.P.No.529 of 2009 and that was dismissed for non-prosecution. Again, the present petition is filed for recalling D.W.1 for the purpose of cross examination. Considering the rival submissions, the learned XVII Assistant Judge, City Civil Court, Chennai allowed the petition on a condition that the respondent should pay costs of Rs.750/- to the petitioner. The reason attributed for allowing this petition is that earlier applications filed by the respondent were not filed for different purpose and in the interest of justice and to give an opportunity to the respondent, the learned XVII Assistant Judge, City Civil Court, Chennai allowed the petition on the aforesaid condition. Against the said order, the present Civil Revision Petitions are preferred.

4. Learned counsel for the petitioner submitted that the suit was filed in the year 2003. The examination of the witnesses on both the sides had been completed and the case is pending for arguments. When the case was pending for argument, the respondent has been filing one petition after another, only with a view to protract the proceedings. The present applications in I.A.Nos. 1 and 2 of 2019 are yet another attempt made by the respondent to further protract the proceedings. According to the learned counsel for the petitioner,

D.W.1 was extensively cross examined and the claim, now made by the respondent, that certain questions have to be asked, cannot be entertained. Similarly, his contention that the Advocate was aged and he was not attending the Court is not the reason for entertaining this petition. However, the learned counsel for the petitioner submitted that without considering these aspects and devious intention of the respondent to protract the proceedings, the learned XVII Assistant Judge, City Civil Court, Chennai allowed the petition and therefore, she prayed for the dismissal of the petition.

5. In reply to the submissions made by the learned counsel for the petitioner, the learned counsel for the respondent submitted that after Mr.B.Ananthakrishnan, Mrs.Skandakumar and Srikanth were handling the matter. The earlier counsel Mr.B.Ananthakrishnan died at an advance stage. Mr.Skandhakumar is also no more now. Therefore, Mr.Srikanth is now handling the case. On perusal of the deposition of D.W.1, it is found that certain important questions were omitted to be asked. Therefore, the present applications had been filed. He submitted that there is no intention to delay the proceedings and the respondents is prepared to cooperate with the trial.

6. Considered the rival submissions and perused the records.

7. It is seen from the submission made by the learned counsel for the petitioner and the records produced, that this case has traveled a long distance from the year 2003. It is not in dispute that examination of witnesses is over and the case is pending for argument. Of course there are applications filed for summoning certain documents and subjecting D.W.1 for hand writing test. Those applications came to be dismissed and the order of dismissal reached its finality. These applications in I.A. Nos.1 and 2 of 2019 have been filed for reopening the evidence of D.W.1. for the purpose of further cross examination. The reason, as indicated earlier is that, certain important questions have been omitted to be asked.

8. Considering the fact that earlier applications have not been filed for recalling D.W.1 and that the parties must be given an opportunity before the trial court, to put forth their case, the Trial Court, in the interest of the Justice, allowed the petitions by compensating with the payment of costs for the delay caused.

9. This Court is in total agreement with the learned XVII Assistant Judge, City Civil Court, Chennai. Of course, there is a huge delay in filing the petition to recall D.W.1. The delay is not the only ground to reject the genuine claim of the parties before the trial Court to produce the best evidence possible. If the opportunity is lost before the trial Court, the Court would not be in a position to render substantial justice. Considering the delay in filing the petition to reopen and recall D.W.1, the learned XVII Assistant Judge, City Civil Court, Chennai ordered costs of Rs.750/- to be paid by the petitioner.

10. This Court is of the considered view that in the interest of justice, the respondent's plea to give an opportunity to recall D.W.1 for the purpose of further cross examination can be considered favourably. This suit is of the year 2004 and examination of the witnesses is over. Therefore, the learned XVII Assistant Judge, City Civil Court, Chennai is directed to fix the date for cross examination of D.W.1 and on the date so fixed, learned counsel for the respondent should complete the cross examination of D.W.1 on the same day without seeking any further adjournment. Learned XVII Assistant Judge, City Civil Court, Chennai is directed to dispose the suit as expeditiously as possible,

preferably within a period of three(03) months from the date of receipt of a copy of this order.

11. With the above directions, these **Civil Revision Petitions** are **Disposed** of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

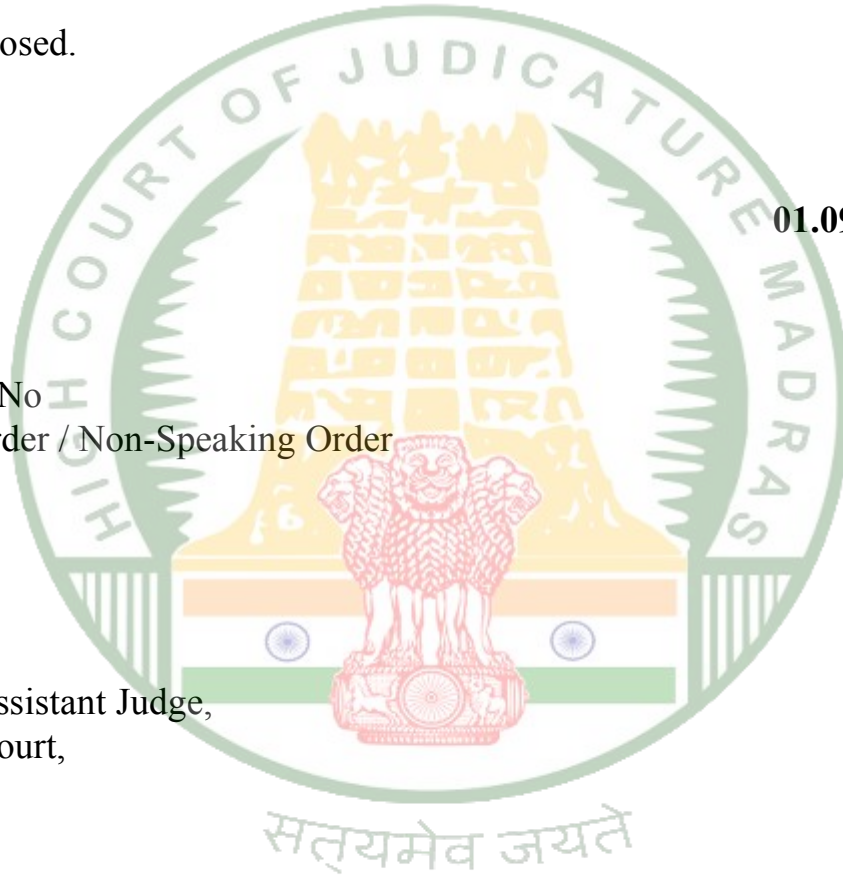
01.09.2021

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

sts/jai

To:

The XVII Assistant Judge,
City Civil Court,
Chennai.

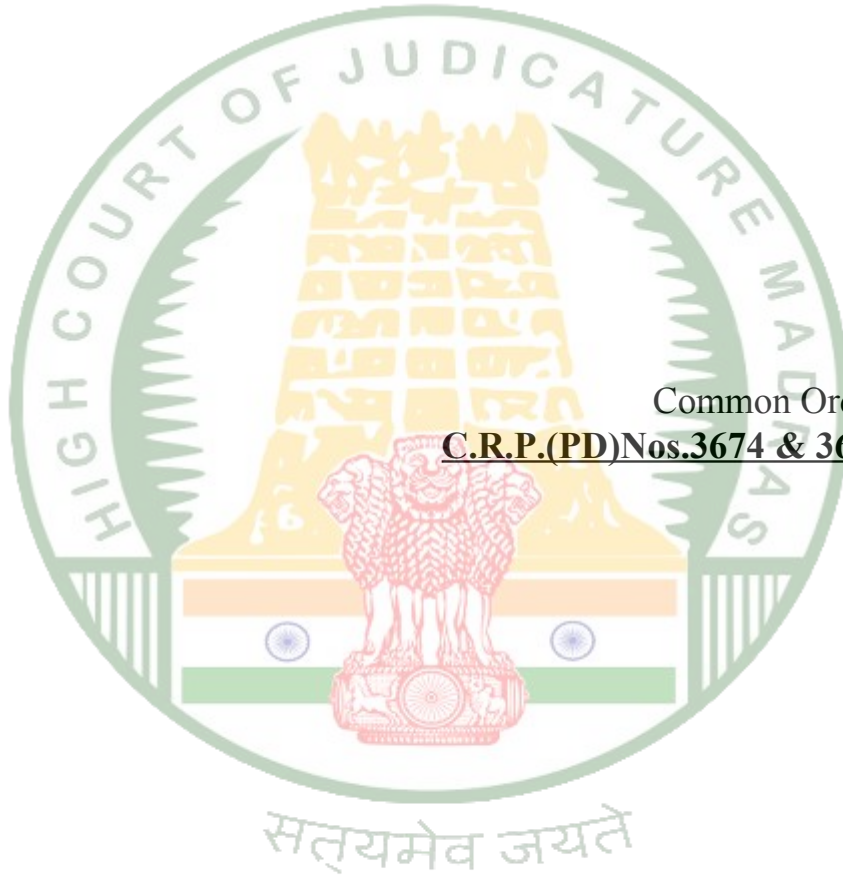


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G.CHANDRASEKHARAN, J.,

sts/jai



Common Order made in
C.R.P.(PD)Nos.3674 & 3676 of 2019

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Dated:
01.09.2019