



CRP.(PD).No.3629/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).No.3629/2019 and CMP.No.23802/2019

[Video Conferencing]

Kalaivanan

.. Defendant/Revision
Petitioner

Vs.

Muraligopal

.. Plaintiff/Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair Order and Decreetal Order dated 10.09.2019 in I.A.No.661/2019 in O.S.No.190/2010 on the file of the Additional District Munsif, Tindivanam, Villupuram District.

For Petitioner : Mr.AL.Ganthimathi

For Respondent : Mr.T.Dhanasekaran

ORDER

(1) This Civil Revision Petition is directed against the order dated 10.09.2019 passed in I.A.No.661/2019 in O.S.No.190/2010 on the



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file of the Additional District Munsif, Tindivanam, Villupuram District as against the order dismissing the application filed by the revision petitioner to receive additional written statement.

- (2) The respondent herein filed the Suit in O.S.No.190/2010 before the Additional District Munsif, Tindivanam, Villupuram District for declaration of title and consequential injunction in respect of the Suit property which is measuring to an extent of 1 acre 27 cents comprised in Survey No.171/1 and 171/2 in Salavadhi Village, Avarapakkam Taluk, Tindivanam. The revision petitioner filed the Written Statement contesting the Suit on various grounds.
- (3) After filing original Written Statement in July, 2011, the revision petitioner wanted to file Additional Written Statement in August, 2019. Considering the fact that the Written Statement has been filed belatedly, the Interlocutory Application filed by the petitioner was dismissed. Aggrieved by the order, dismissing the petitioner's application to file Additional Written Statement, the above Civil Revision Petition is filed.
- (4) The Lower Court dismissed the application finding that the revision petitioner had dragged the proceedings already. It was



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pointed out that an *ex parte* decree was passed. Thereafter, the petitioner filed a petition under Order 9 Rule 13 with a delay. After setting aside the *ex parte* decree several opportunities were given to the defendant at various stages. The Trial Court found that the application to file Additional Written Statement is filed after allowing several applications to reopen and recall witnesses for further examination. The Trial Court is of the view that the application is filed to fill up the lacuna and therefore, it cannot be allowed.

- (5) From the reading of the Written Statement, it is seen that some factual details are elaborated. It is the case of the defendant that the petitioner/defendant was cross examined regarding certain details which is not found in the original Written Statement and that therefore, an Additional Written Statement is necessary.
- (6) It is also stated that no serious prejudice is likely to be caused to the plaintiff on account of the delay. An application to file additional pleading furnishing more particulars or information which are relevant to decide the contentious issue cannot be rejected only because it is filed in the belated stage. The Lower



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Court has referred to the conduct of the revision petitioner/defendant and observed that the application is to drag on the proceedings.

- (7) It is settled law that the Court has vide discretion to permit the defendant to file additional plea which is not inconsistent or contrary to the original Written Statement. In this instance, there is nothing to doubt the *bona fides* of the petitioner. The Lower Court can allow the application to file the Additional Written Statement, ignoring the delay in the absence of any prejudice to the other side. The Trial Court has observed that the defendant was cross examined regarding the particulars stated in the Written Statement.
- (8) Since, no other valid reasons are stated to reject the plea, this Court is inclined to interfere with the order of the Lower Court in dismissing the petition to file Additional Written Statement. However, this Court is able to see that the long delay in filing the Additional Written Statement has caused inconvenience to the respondent/plaintiff.
- (9) Hence, subject to payment of a sum of Rs.5,000/- [Rupees Five Thousand Only] as cost to the respondent in this Civil Revision



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Petition within the period of four weeks from the date of receipt of a copy of this order, the Civil Revision Petition is **allowed** and the order in I.A.No.190/2010 stands set aside.

- (10) Since, the Suit is pending for a long time and it is obvious that the petitioner is the reason for the considerable delay in disposal, the Trial Court is directed dispose of the Suit within the period of three months from the date of receipt of a copy of this order. The cost may be paid to the respondent or his counsel before the Lower Court. Consequently, connected Civil Miscellaneous Petition is closed.

17.12.2021

cda
Internet : Yes

To

1.The Additional District Munsif,
Tindivanam, Villupuram District.



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S.S.SUNDAR, J.,

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