

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.03.2021
CORAM :
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
C.R.P (PD).No.962 of 2017
and
Cmp.No.4795 of 2017

Jayalakshmi @ Jaya

... Petitioner

Versus

Mani @ Rajamani

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 10.02.2017 passed in I.A.No.42 of 2017 in O.S.No.32 of 2016 by the learned III Additional District Judge, Salem.

For Petitioner : Mr.J.Sudhakaran

For Respondent : Mr.P.Jagadeesan

ORDER

This Civil Revision Petition is directed as against the order dated 10.02.2017 passed in I.A.No.42 of 2017 in O.S.No.32 of 2016 by the learned III Additional District Judge, Salem, thereby, dismissing the petition seeking permission to file an additional written statement in the suit.

2.The petitioner is the defendant and the respondent is the plaintiff. The respondent filed the suit for specific performance on the strength of agreement of sale deed dated 03.02.2014. The petitioner filed the written statement on 23.06.2016. When the matter was posted for cross examination of PW1, the petitioner filed the petition, seeking permission to file the additional written statement, which was rejected by the Court below.

3.Heard both sides and perused the materials available on record.

4.On a perusal of the averments in the affidavit filed in support of the petition seeking to file the additional written statement, it is evident that the petitioner had stated that the earlier counsel, who appeared on her behalf had failed to draft the written statement with all the particulars as submitted by her. Since her earlier counsel has not properly incorporated all the details in the written statement, she has been advised by the present counsel to file an additional written statement. It was also stated in the affidavit that she has not entered into

any agreement for sale at all and the respondent had obtained her signature in the agreement for sale behind her back, therefore, according to her, the filing of additional written statement is necessary to furnish certain details.

5.A perusal of the additional written statement filed along with the petition would reveal that in the year 2012, when the petitioner herein was in need of amount to the tune of Rs.4 Lakhs and approached the respondent, at that time, the petitioner agreed to pay the same within 2 years and promised to repay the said amount along with the interest at the rate of 12% per annum. In order to discharge the debt as agreed, on 20.03.2012 the petitioner executed a sale agreement, whereby the sale price was fixed for Rs.4,50,000 (Rupees Four Lakhs Fifty Thousand only) in respect of the said loan amount of Rs.4,00,000/- (Rupees Four Lakhs only) which was premeditated to be an advance of the sale price, and the time to discharge the loan amount was fixed as two years, in the name of the petitioner.

6.The petitioner paid the interest every month to the plaintiff/respondent herein regularly but due to the financial crisis, she was not able to repay the principal amount to the respondent herein within the period of two years. While things stood thus, the respondent and his politically involved henchmen threatened the petitioner with dire consequences, and at that time the petitioner represented that she will clear the debts by obtaining loan from the bank by mortgaging her property. The respondent herein also undertook to arrange the bank loan provided the petitioner prepared to execute the necessary deeds. Believing the said words, the petitioner signed in blank stamp papers and green sheets and the respondent also prepared to cancel the deed and security deed in favour of the bank as per the instruction by the bank officials. According to the petitioner, these averments were not incorporated in the written statement filed by her.

7.Whereas, on a perusal of the written statement filed by the petitioner it reveals that the agreement for sale dated 03.02.2014 was denied as false and fabricated one. Except this defence, no other defence was mentioned in the written statement. Therefore, the additional written statement is nothing, but a pretext to introduce a new plea contradicting the earlier written statement filed by the petitioner herein. Further, it was filed when the case was posted for cross-examination of PW1 and he also entered the box for cross examination. The petitioner took time for cross examination on several occasions. Therefore, the present petition is nothing but an afterthought.

8.The learned counsel for the petitioner relied upon a judgment reported in 2016 (4) CTC 750, in the case of Devendran vs. P.V.Palani, in which the Court held that in paragraph No.17 as follows:-

"17. In fact, except the plea that the application for reception of additional written statement was belated and it was intended to drag on the proceedings, which is found in paragraph 4 of the counter statement of the respondent herein, no other ground has been alleged in the counter statement,. The contents of the previous paragraphs simply deal with the merits of the case. They are not germane for the enquiry in an application for reception of additional written statement. There is no plea made by the respondent/plaintiff that an attempt has been made by the revision petitioners/defendants to change the nature of the suit itself by the proposed additional written statement. However, the learned trial Judge, besides referring to the ground of belatedness, chose to erroneously hold that the proposed written statement would change the very nature of the suit, as the ground dismissing the application for reception of additional written statement. The said ground is not available and the above said observation made by the learned trial Judge is baseless. For the delay caused in filing the application for reception of additional written statement, at the best, will entitle the respondent/plaintiff to press for cost. In line with the judgment of the Supreme Court in Olympic Industries' case, this Court comes to the conclusion that the revision petitioners/defendants shall be allowed to file the proposed additional written statement provided they pay a cost of Rs.5000/-to the respondent/plaintiff."

9.In the above decision, this Court held that there is no plea made by the respondent/plaintiff that an attempt has been made by the revision petitioner/defendant to change the nature of suit itself by the proposed additional written statement. Therefore, this Court allowed the defendant to file the additional written statement. Whereas, in the case on hand, as stated supra, the additional written statement sought to be filed completely introduces a new plea in contradiction to the earlier written statement. In this regard, the learned counsel for the respondent relied upon the judgment of Chinnammal vs. Prakash case reported in (2015) 3 Law weekly page no.336 in

paragraph No.15 which reads as follows:-

"15.Indisputably, the original written statement was filed on 07.10.2013 and the suit was posted in the special list on 06.01.2014 and the trial had commenced on 20.01.2014. After taking several adjournments for cross examination of the witnesses i.e., nearly for seven months, the petitioner had filed the application for receiving additional written statement, taking a new plea in the additional written statement."

10.In the above decision, this Court held that when the petitioner filed a petition for filing additional written statement by taking a new plea in the written statement, it cannot be permitted. The ratio laid down in the above judgment squarely applies to the case on hand. Therefore, this Court does not find any illegality or infirmity in the order passed by the Court below. Accordingly the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

klt

To

1.The III-Additional District Court, Salem.

2.The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.P.Jagadeesan,Advocate, SR.NO. 17488

C.R.P (PD).No.962 of 2017
and
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JPL(CO)
KKN 30/04/2021

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