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C.R.P. (PD) No. 4307 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (PD) No.4307 of 2019
and C.M.P. No.28016 of 2019

M/s. Universal Contractors and Builders,
Rep. by its partners

1. B.Kamakshi

2. K.Saravanan

Both residing at Plot No.B-1,
Haridossapuram Main Road,
Chitlapakkam, Chennai – 600 064.

...Petitioner

Versus

Jothilakshmi

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.07.2019 in I.A. No.40 of 2018 in O.S. No.39 of 2009 on the file of the Principal Subordinate Judge, Chengalpattu.

For Petitioner

: Mr. Ravikumar Paul

for M/s. S.Paul and Paul

For Respondent

: Mr. B.Eswaran

for Swaraj Associates



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ORDER

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This Civil Revision Petition is directed against the order passed by the learned Principal Subordinate Judge, Chengalpattu, in I.A. No.40 of 2018 in O.S. No. 39 of 2009.

2. The revision petitioner as plaintiff filed a suit in O.S. No.39 of 2009 on the file of the Sub Court, Chengalpattu, for recovery of a sum of Rs.2,16,904/- being the balance of cost of construction and the additional work done in the suit property in terms of the construction agreement entered into between the plaintiff and the defendant.

3. During the pendency of the suit, an Advocate Commissioner was appointed at the instance of the revision petitioner in I.A. No.169 of 2009 to conduct local inspection of the suit property with the assistance of the Civil Engineer and to note down the size and nature of construction and to note down quality and measurements as per the warrant of Commission. Thereafter the plaintiff filed an application in I.A. No.40 of 2018 to permit them to send witness summons to the consulting civil engineer and the licensed surveyor. The said application was dismissed by the learned Subordinate Judge, Chengalpattu.



mainly on the ground that the application was filed five months after the Advocate Commissioner filed his report. It is also observed by the lower Court that the application is not filed under any specific provision. The lower Court has also found that the petitioner has filed the petition without submitting his objection to the Advocate Commissioner's report and therefore, there is no valid ground for allowing the petition.

4. Learned counsel for the petitioner submitted that the application to issue witness summons to the Engineer was filed not for the reason that he is aggrieved by the Advocate Commissioner's report but to elucidate some facts which would be in support of his case relying upon the Advocate Commissioner's report. Therefore, it is submitted that the observation of the lower Court that the petitioner is not entitled to file application without filing any objection to the Advocate Commissioner's report, is erroneous. It is also submitted that the lower Court has acted with material irregularity in dismissing the Interlocutory Application as if there is no ground for accepting the petition. With regard to the delay, it is stated that the application is filed within a reasonable time and no prejudice is likely to be caused to the other side. Learned counsel for the petitioner has also submitted that the examination of consulting Engineer is necessary.



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5. Having regard to the facts and circumstances of the case and the reasons for the appointment of the Advocate Commissioner in this case, this Court is of the view that the revision petitioner is entitled to examine the consulting engineer unless serious prejudice is likely to be caused to the other side. It is the case of the respondent that they have filed an objection to the Advocate Commissioner's report. Therefore, it would be more in the interest of both parties to examine the Engineer who accompanied the Advocate Commissioner. It is to be noted that the assistance of the Civil Engineer is required as his opinion as a person acquainted with the civil work will really make the report useful for both parties. In such circumstances, this Court is unable to accept the view expressed by the lower Court that no ground is made out to examine the Engineer. The petition is filed within five months from the date of report of the Advocate Commissioner. No serious prejudice is likely to be caused as the trial has just commenced and the evidence of defendant is not yet closed. In such circumstances, preventing the petitioner from examining the witness who has assisted the Advocate Commissioner in drawing the report as directed by this Court will be inequitable.

6. As a result, this Civil Revision Petition is allowed. The order in I.A.



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No.40 of 2018 in O.S. No.39 of 2009, passed by the Principal Subordinate Judge, Chengalpattu, is set aside and the Interlocutory Application in I.A. No.40 of 2018 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.12.2021

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

The Principal Subordinate Judge, Chengalpattu.



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S.S.SUNDAR, J .,

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