



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.175 of 2019

and

CMP(MD)No.782 of 2019

Pon.Gangatharan

... Petitioner/Respondent/Plaintiff

vs.

K.Subbiah

... Respondent/Petitioner/Defendant

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 27.11.2018 made in I.A.No.254 of 2018 in O.S.No.47 of 2012 on the file of the 3rd Additional District Court, Tirunelveli.

For Petitioner : Mr.T.Lajapathi Roy
For Respondent : Mr.H.Arumugam

ORDER

This revision petition has been filed to set aside the order dated 27.11.2018 made in I.A.No.254 of 2018 in O.S.No.47 of 2012 on the file of the IIIrd Additional District Court, Tirunelveli.

2.The revision petitioner as plaintiff filed a suit in O.S.No.47 of 2012 on the file of the IIIrd Additional District Court, Tirunelveli, against the respondent/defendant for the relief of specific performance. The respondent/defendant filed the present I.A.No.254/2018 to receive the additional written statement. The Court below allowed the said application on payment of cost of Rs.2,000/- to the petitioner/plaintiff, against which, this revision petition is filed by the plaintiff.

3.The learned counsel for the petitioner/plaintiff would state that the trial Court failed to note that additional written statement has been filed six years later without any valid reasons. He would further state that the averments in the additional written statement are totally different to the original written statement and by filing additional written statement, the respondent is taking up a new plea thereby changing the nature of the case, but without considering the same, the Court below has erroneously allowed the application. Thus, he would pray for setting aside the impugned order.



4.The learned counsel for the respondent/defendant would state that being an illiterate person, the respondent failed to give some main instructions over some material facts to his counsel at the time of preparing the written statement and the additional written statement is only explaining his contention raised in the original written statement which are necessary to determine the issue in the main suit and considering the same, the trial Court has rightly allowed the present petition which does not require interference by this Court.

5.Heard the learned counsel for the petitioner as well as the respondent.

6.Perusal of record shows that the petitioner filed a suit for specific performance on the basis of registered sale agreement dated 15.12.2011. When the suit was posted for defendant side evidence, the respondent/defendant remained absent and therefore, the suit was decreed exparte on 25.10.2013 and subsequently, a petition to condone the delay of 835 days in filing the petition to set aside the exparte decree was filed and it was dismissed by the lower Court and on revision in CRP(MD)No.526/2018, the order passed by the lower court was set aside and as per the order passed in the above CRP, the suit was restored to file. Thereafter, when the suit was posted for further evidence on the side of the respondent/defendant, the respondent filed I.A.No.254 of 2018 under Order 8 Rule 9 of C.P.C to receive additional written statement and the same was allowed with cost of Rs.2,000/- to the petitioner, against which, the petitioner/plaintiff has preferred this revision. The learned Judge observing that the respondent/defendant is an illiterate person and failed to disclose necessary facts at the time of filing the original written statement, has allowed the petition to receive the additional written statement with the cost of Rs.2,000/- to the petitioner. Though the defendant is an illiterate, he has appeared through Counsel, and therefore, he cannot plead that he is an illiterate.

7.The suit is of the year 2012 and the present revision petition is pending from 2019 onwards. While ordering notice, this Court had granted an order of interim stay and the matter is pending for two years before this Court. Though this Court finds that the reasoning of the learned Judge is not correct in allowing the application, considering the facts and circumstances of the case where the suit is pending from 2012 and further, the genuineness of the averments in the additional written statement can be gone into during trial, this Court in the interest of justice, is not inclined to interfere with the order passed by the Court below. However, considering the fact that the suit is of the year 2012, ends of justice would be met, if a direction is given to the learned Judge to dispose the suit within a time frame. Therefore, without [adverting to the merits of the case](https://hcservices.ecourts.gov.in/hcservices/), a direction is issued to the learned IIIrd Additional District Judge, Tirunelveli to dispose the



suit in O.S.No.47 of 2012 in accordance with law within a period of six months from the date of receipt of a copy of this order.

8. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The IIIrd Additional District Judge,
Tirunelveli.

Copy To:

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-8773[F] dated 04/03/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-9370[F] dated 08/03/2021)

ORDER MADE IN
CRP(MD) No.175 of 2019
DATED : 03.03.2021

AS(11.06.2021) 3P 5C