



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.1087 of 2021

C.M.P. (MD) .No.6302 of 2021

WEB COPY

Saraswathy

... Petitioner

vs.

B.Lenin

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.04.2021 in IA.No.1 of 2019 in OS.No.71 of 2012 on the file of III Additional District Court, Tiruchirapalli.

For Petitioner

:Mr.M.Ashok Kumar

For Respondent

:Mr.P.Arun Jayatram

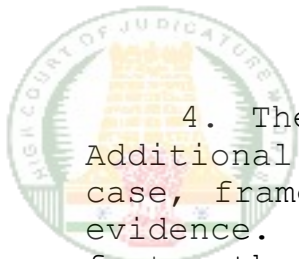
O R D E R

The revision petitioner/defendant filed this petition to set aside the order dated 27.04.2021 in IA.No.1 of 2019 in OS.No.71 of 2012 on the file of III Additional District Court, Tiruchirapalli.

2. IA.No.1 of 2019 was filed by the plaintiff to re-call PW1 and PW2 to let in additional evidence since additional issues were framed in the suit.

3. Already three re-opening and re-calling petitions were filed by the plaintiff. The first two petitions were allowed. IA.Nos.223 and 224 of 2017 filed for the third time by the plaintiff for re-opening and re-calling was dismissed and the plaintiff filed CRP(MD) Nos.2052 and 2053 of 2018 before this Court. The above petitions were dismissed and this Court in paragraph No.4 of the order observed as follows.

"4.That apart, as contended by the learned counsel for the respondent, the plaintiff had earlier filed two I.As., for reopening his side and on both the occasions, the defendant expressed her no objection and the same was allowed. The petitioner cannot keep on filing I.As., one after another for reopening his side. The case is of the year 2012. The matter is posted for arguments. The Court below is absolutely justified in dismissing the I.As., filed by the revision petitioner. There is no merit in these Civil Revision Petitions."



4. The case was posted for Judgment on 13.09.2019. The III Additional District Judge, Tiruchirapalli, suo-motu re-opened the case, framed additional issues and posted the matter for additional evidence. When the additional issues were framed leading to new facts, then additional evidence can be adduced. But, in the case on hand, the additional issue is whether the plaintiff was ready and willing to perform the contract. For the suit specific performance, the basic fact to be proved by the plaintiff is ready and willingness to perform the contract on his side. So, it is not necessary to re-call PW1 and PW2 and establish the fact. Even after evidence on defendant's side was closed, arguments heard and the case is posted for Judgment, the respondent/plaintiff had filed the re-call petition for the fourth time. In the circumstances of this case, there is no necessity to adduce additional evidence by PW1 and PW2.

5. Accordingly, this Civil Revision Petition is allowed. The fair and decreetal order dated 27.04.2021 in IA.No.1 of 2019 in OS.No.71 of 2012 on the file of III Additional District Court, Tiruchirapalli is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mbi

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 III Additional District Court,
Tiruchirapalli

+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-31573[F] dated 07/10/2021)
C.R.P. (MD) .No.1087 of 2021
06.10.2021

GC(18.10.2021) 2P 3C