



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.02.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P(PD) (MD)Nos.396 and 399 of 2014

In two revisions:

Shakeela Asraf

... Petitioner/Petitioner/Plaintiff

Vs.

Sudhakar

... Respondent/Respondent/Defendant

PRAYER IN BOTH REVISIONS:- Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the order passed in I.A.Nos.402 and 403 of 2013 in O.S.No.124 of 2009 on the file of the 1st Additional District Judge, Trichy dated 14.02.2014.

In both revisions:

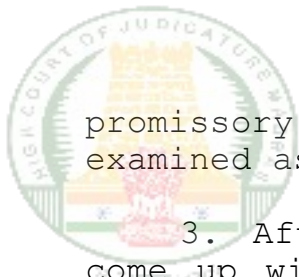
For Petitioner : Mr.P.Samuel Gunasingh

For Respondent : Mr.A.N.Ramanathan

C O M M O N O R D E R

The plaintiff in O.S.No.124 of 2009 is the revision petitioner. Challenge in these revisions is to the common order made in I.A.Nos.402 and 403 of 2013 dated 14.02.2014. These two applications were filed by the plaintiff seeking re-opening of the case and to recall P.W.1 for the purpose of cross-examination by the defendant.

2. The suit is one for recovery of money based on a promissory note. The defendant denied the borrowal as well as execution of the promissory note. The plaintiff was examined as P.W.1 on 12.04.2012 and Exts.A1 to A3 were marked. At that juncture, the defendant came up with an application to refer the document to an expert for opinion on the signature of the defendant. Cross-examination of the plaintiff was deferred in view of the pendency of the said application for reference of the document to the hand writing expert. Thereafter, the suit was posted for cross-examination of P.W.1. P.W.1 did not appear for three hearings and hence, the court closed the evidence of P.W.1 and posted the suit for further evidence on the side of the plaintiff. One of the attestors of the



promissory note was examined as P.W.2. Thereafter, the defendant was examined as D.W.1 and the expert was examined as D.W.2.

3. After examination of D.W.2, the plaintiff thought fit to come up with these applications to re-open her evidence to enable the defendant to cross-examine her. The learned I Additional District Judge, Trichirappalli, who heard the applications, dismissed the same on the ground that it is not open to the plaintiff to seek re-opening of the evidence after examination of further evidence on her side and completion of the defendant's side evidence. Hence these revisions.

4. I have heard Mr.P.Samuel Gunasingh, learned counsel appearing for the petitioner and Mr.A.N.Ramanathan, learned counsel for the respondent.

5. While Mr.P.Samuel Gunasingh, learned counsel appearing for the petitioner would vehemently contend that the trial court was not right in dismissing the applications on the ground that the other witnesses have been examined. Drawing my attention to the provision under Order 17 Rule 18 C.P.C, the learned counsel would contend that it is open to the court to re-open the evidence and recall a witness at any time and what is sought for is only an opportunity to re-open the evidence and the court ought not to have adopted technical approach as has been done by the trial court.

6. Contending contra, Mr.A.N.Ramanathan, learned counsel appearing for the respondent would submit that the power to recall a witness vests on the court and the same cannot be doubted. However, the learned counsel would submit that the power can be exercised only judiciously and not otherwise. Re-opening of the evidence should not be for the mere asking. The party, seeking re-opening of the evidence and recall of a witness, must establish the need for such re-opening or recalling. The learned counsel would further contend that the facts available in the case on hand would show that the plaintiff has been negligent in prosecuting the case. After receipt of expert's opinion, the case was posted at least three times for cross-examination and P.W.1 was not present. The evidence was closed and the plaintiff did not seek to re-open her evidence immediately but she chose to examine the attesting witness as P.W.2. Thereafter, the plaintiff's side evidence was closed. The defendant was examined as D.W.1 and the expert, who had given the opinion, was examined as D.W.2 and was cross examined. After almost entire evidence had been completed, the plaintiff has come with these applications seeking to re-open the evidence and recall P.W.1 for being examined by the defendant. This, according to the learned counsel, is impermissible.

7. I have considered the rival submissions.



8. As rightly submitted by the learned counsel for the respondent, the provision under Order 18 Rule 17 C.P.C is very wide. The court has discretion to recall any witness at any time and put questions. This Court in **1988 (2) MLJ 192 (Vasantha and others Vs. Rathinasami and others)** has held that such power can be exercised at the instance of a party also.

9. While allowing the application under Order 18 Rule 17 C.P.C, the court must see that the attempt is not to fill up lacunae or to undo the damage that has been done in cross examining of other witnesses of the plaintiff. Such eventuality may not arise in this case inasmuch as recalling is not for the purpose of letting any fresh evidence but it is only for the purpose of cross examining P.W.1 by the defendant so as to avoid technical objection at a later stage from the defendant that the plaintiff had not made herself available for cross examination and therefore her evidence should not be looked into. Once it is found that the purpose of recalling is not to fill up a lacunae or to undo the damage that has been done during cross examination of other witnesses, I do not think there can be any serious objection for re-opening of evidence of the plaintiff and recalling P.W.1 only for the purpose cross examination by the defendant. I am therefore of the considered opinion that the trial court was not right in dismissing the applications on the ground that inevitable corollary is to eschew the evidence of P.W.1 due to the absence of cross examination. I do not think the court should shut-down the evidence of a party by adopting technicality. In view of the same, the common order passed in I.A.Nos.402 and 403 of 2013 in O.S.No.124 of 2009 on the file of the 1st Additional District Judge, Trichy dated 14.02.2014 is set aside. Evidence of plaintiff is re-opened and P.W.1 is recalled only for the purpose of cross examination by the defendant. It is made clear that the plaintiff cannot take advantage of this order to cross examine any other witness on her side or to file further proof affidavit in chief examination.

10. In fine, these Civil Revision Petitions are allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)



To:

1.The 1st Additional District Judge, Trichy

2.The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P (MD) Nos. 396 and 399 of 2014

02.02.2021

VB (18.02.2021) 4P 4C