



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)Nos.2232 and 2233 of 2019

1. Janarthanan

2. Jeya

... Petitioners/Petitioners/Plaintiffs
(in both CRPs)

vs.

S.Gandhi

... Respondent/Respondent/Defendant
(in both CRPs)

Common Prayer: Petition filed under Article 227 of Constitution of India, to set aside the order dated 24.09.2019 made in I.A.Nos.484 and 485 of 2019 in O.S.No.112 of 2011 on the file of the District Munsif Court, Kovilpatti and to direct the learned trial Court to mark additional documents as plaintiff's side evidences.

For Petitioners : Mr.M.Solaisamy
(in both CRPs)

For Respondent : Mr.M.Veilkaniraju
(in both CRPs)

COMMON ORDER

These revision petitions filed by the petitioners are against the dismissal of two applications in I.A.Nos.484 and 485 of 2019 in O.S.No.112 of 2011 on the file of the District Munsif Court, Kovilpatti.

2. Learned counsel for the revision petitioners/plaintiffs would state that the revision petitioners/plaintiffs had filed a suit in O.S.No.112 of 2011 against the respondent/defendant for permanent injunction restraining the defendant, men or agents from in any manner disturbing or interfering with the administration, conduct and management of the business run by the petitioners/plaintiffs in the suit property. Subsequently, the revision petitioners had filed I.A.No.484 of 2019 to recall the petitioners' witness to prove his case and thereafter, another I.A.No.485 of 2019 also been filed by the petitioners praying that certain documents may be received as additional evidence in O.S.No.112 of 2011. The said applications were dismissed.



Aggrieved over the same, these revision petitions have been filed by the petitioners/plaintiffs.

3. Heard the learned counsel for the petitioners as well as the respondent and perused the materials placed before this Court.

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4. Perusal of record shows that admittedly, the suit is of the year 2011 and after six years at the stage of arguments, the additional documents were sought to be received by the trial Court stating that the petitioner got the documents only now. The petitioner has not stated how the documents are useful for the decision of the case and why the petitioners were not able to get those documents at that point of time. It is the categorical finding of the learned Judge that all such additional documents were in existence during the examination of witness. But, even while examining the witness, the revision petitioners had not whispered about the existence of those documents but only after closure of examination of witness and when the matter was posted for arguments, the revision petitioners have come out with these applications. The revision petitioners cannot mount the witness-box at this stage to introduce new additional documents.

5. The Hon'ble Supreme Court in **M/s.Bagai Construction v. M/s.Gupta Building Material Store**, reported in (2013) 3 MLJ 185 (SC) observed as under:

"11) The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, ~~allowed those~~ applications and permitted the plaintiff



to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted.

12) After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC."

The above judgment is also applicable to the facts and circumstances of the present case and therefore, I do not find any reason to interfere with the orders passed by the learned Judge.



6. Accordingly, these Civil Revision Petitions are dismissed.
No costs.

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Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The District Munsif Court,
Kovilpatti.

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

ORDER MADE IN
CRP(MD)Nos.2232 and 2233 of 2019
DATED : 11.03.2021

pm(CO)

TR(22.04.2021) 4P 4C