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C.R.P. (PD) No.313 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.06.2022

Delivered on : 07.07.2020

CORAM

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (PD) No.313 of 2020
and CMP No.1626 of 2020

1. Shree Kumaran Agency
Represented by its Proprietor
N.Kannan,
No.8-A, Pragadeeswarar Nagar,
Jai Nagar 5th Street, Arumbakkam,
Chennai 600 106.

2. R.Hemalatha

... Petitioners

Vs.

Devakumari Lydia

... Respondent

Prayer : The Civil Revision petition filed under Article 227 of the Constitution of India, against the order, dated 05.12.2019 passed in I.A.No.3 of 2019 in O.S.No.3825 of 2019 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioners : Mr.N.Mohan for
Mr.R.Sivakumar

For Respondent : Ms.S.P.Arthi

ORDER



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The petitioners are defendants in O.S. No. 3825 of 2019. The suit was filed by the respondent herein, as plaintiff, for recovery of a sum of Rs.44,60,530/- together with interest at 18 % per annum from the date of the suit till the date of realisation, to direct the defendants jointly and severally to pay a sum of Rs.2,24,090/- together with interest @ 18% p.a., from the date of the suit till the date of realization and to pay costs.

2. In the suit, on notice, the defendants filed written statement repudiating the plaint averments. One of the defences raised in the written statement is to the effect that the plaintiff, along with the plaint, has filed the Xerox copies of document Nos.1 to 5, which are statement of accounts alleged to have been issued by the Indian Overseas Bank, Ranipet for the period from 01.01.2016 to 30.06.2018. Notwithstanding the said defence raised by the defendants, the defendants have also filed the instant application in I.A.No.3 of 2019 praying to produce the original statement of Accounts of the plaintiff viz., Devakumari Lydia, Proprietrix: Shree Shree Indane Gas Service, bearing A/C No.007802000003735, for the period from 01.01.2016 to 30.06.2018 which has been received from the Indian Overseas Bank at Ranpet Branch from the respondent/plaintiff.

3. The trial Court after hearing the counsel appearing for both sides,



dismissed the application with the following observation in paragraph 9 of the order which is impugned in this revision:

“9. After perusing the entire records and after hearing the arguments both sides in extenso, it is seen that the petitioner has filed this petition for production of original statement of account pertaining to Devakumari Lydia, Proprietrix, Shree Shree Indane Gas Service for the period from 01.01.16 to 30.06.18 from Indian Overseas Bank, Ranipet Branch. Further at this juncture it is pertinent to note that the petitioner as on 20.09.2019 filed another petition in IA 2/2019 in which the Branch Manager, Indian Overseas Bank, Ranipet Branch was arrayed as a 2nd respondent and the said petition was filed directing the Bank to produce the original statement of Accounts pertaining to Devakumari Lydia, Proprietrix, Shree Shree Inadane Gas Service for the period from 01.01.16 to 30.06.18 from Indian Overseas Bank, Ranipet Branch. Further in the said petition, the Bank Manager, Ranipet Branch had filed vakalath and then produced the original statement of account as called for by the petitioner pertaining to the Current Bank A/C.No.007802000003735 of Devakumari Lydia, Proprietrix, Shree Shree Indane Gas Service for the period from 01.01.16 to 30.06.18. Since the said document was produced as called for the petitioner by the Indian Overseas Bank, Ranipet Branch, the petition was closed on 14.11.2019. Now the present petition is filed with the same prayer for the production for the very same document. Since the document as called for by the petitioner



was already produced in original by the Indian Overseas Bank, Ranipet Branch on 14.11.2019 in IA 2/2019, I found no necessity for the same document to be produced by the respondent herein once again in this petition. Hence, this petition does not hold any merit and is liable to be dismissed and therefore dismissed as unnecessary.”

4. The learned counsel for the petitioners would submit that the trial Court has predetermined the relief sought for and erroneously dismissed the application. The learned counsel would further submit that if the documents sought for by the petitioners/defendants are summoned, it would throw much light on the defence raised by the defendants, more so that the respondent has filed the suit for recovery of money. Therefore for effectively defending the frivolous suit filed by the respondent/plaintiff, it is just necessary that the documents have to be produced from the Indian Overseas Bank, Ranipet Branch. The trial Court has failed to take note of the fact that the revision petitioners/defendants did not dispute the production of the statement of accounts. What was disputed is with respect to certain entries which were conveniently excluded by the respondent/plaintiff on her own. It is in this circumstance, the trial Court ought to have allowed the application filed by the revision petitioners/defendants. The specific plea of the revision petitioners/defendants is that the original statement of accounts issued by the Indian



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Overseas Bank, Ranipet Branch has to be filed along with the plaint. But the

respondent/plaintiff fabricated and filed Xerox copies of the document Nos.1 to

5. The defendants also specifically stated that the statement of accounts filed by the respondent/plaintiff is not the statement of accounts issued by the Indian Overseas Bank, Ranipet. When such a plea has been raised by the revision petitioners, the Court below ought to have allowed the application to produce the statement of account without which, it would be very difficult for the revision petitioners to prove their defence in the trial.

5. To substantiate the above plea, the learned counsel for the revision petitioners placed reliance on the decision of this Court reported in **(2021) 6 MLJ 596** in ***Mallikkinnisha Vrs. Jothinathan and ors.*** to contend that the trial Court had predetermined the defence raised by the defendants and dismissed the petition.

6. On the above contention, this Court heard the learned counsel appearing for the respondent/plaintiff who justified the order passed by the trial Court and prayed for dismissal of the Civil Revision petition.



7. I have heard the learned counsel appearing for both sides and perused the materials available on record.

8. On perusal of the order passed by the trial Court, it is very clear that already the revision petitioners have filed IA No.2 of 2019, in which the Branch Manager, Indian Overseas Bank, Ranipet was arrayed as a 2nd respondent. IA No.2 of 2019 was filed by the defendants for a direction to direct the Indian Overseas Bank, Ranipet to produce the original statement of accounts pertaining to Devakumari Lydia, Proprietrix, Shree Shree Indane Gas service for the period from 01.01.2016 to 30.06.2018. In the said petition, the Bank Manager of the Indian Overseas Bank, Ranipet Branch has filed vakalat and also produced original statement of accounts as prayed for in IA No. 2 of 2019. However, the instant petition has been filed by the revision petitioners before the Court below for the very same prayer. When the Branch Manager, Ranipet Branch has come on record to produce the statement of accounts called for, it is superfluous on the part of the revision petitioners to file the instant petition for the very same relief. The trial Court has rightly pointed out the above aspect and dismissed the application filed by the revision petitioners.



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9. Further, the decision relied on by the learned counsel for the revision petitioners in **(2021) 6 MLJ 596** cited supra, cannot have application to the present case. In that case, the Village Administrative Officer, Revenue Inspector and Tahsildar were sought to be summoned to be examined as witness in the suit. Such a relief was rejected by the trial Court by stating that their examination is unnecessary. Assailing the order passed by the Court below, the revision petition was filed before this Court and this Court held that it would be premature to assess the evidentiary value of the witnesses to be examined on the side of the plaintiff. It was further held that the right of the plaintiff to prove her case cannot be shut by observing that the evidence of the proposed witnesses will be of no use to the plaintiff. Accordingly this Court allowed the Civil Revision Petitions. But, in the present case, already the statement of account, which is sought to be produced by the defendants/ revision petitioners, has been produced in IA No.2 of 2019 and it has been taken on record by the trial Court. While so, the decision relied on by the counsel for the petitioners has no application to the present case.

10. It is needless to mention that during the course of trial, the original statement of accounts produced through the Branch Manager, Indian Overseas



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Bank in IA No.2 of 2019, can be taken note of by the trial Court to adjudicate the dispute between the parties.

11. In the result, this Civil Revision Petition stands dismissed, confirming the order passed by the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

07.07.2022

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Index : Yes / No

Speaking order / Nonspeaking order

To

The XVII Additional City Civil Court,
Chennai.



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S. KANNAMMAL, J

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