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CRP(PD).Nos.2551 & 2552 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

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THE HONOURABLE Mr.JUSTICE S.SOUNTHAR

**CRP(PD).Nos.2551 & 2552 of 2015
and
M.P.No.1 of 2015**

P.G.Khemani

... Petitioner in both CRPs

Vs.

Jaswanth Munoth

... Respondent in both CRPs

Prayer in CRP(PD) No.2551 of 2015 : Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the orders passed on 26.02.2015 in I.A.No.2060 of 2015 in O.S.No.9514 of 2010, on the file of the III Additional District Judge, City Civil Court at Chennai.

Prayer in CRP(PD) No.2552 of 2015 : Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the orders passed on 26.02.2015 by allowing the re-call petition in I.A.No.2810 of 2015 in O.S.No.9514 of 2010, on the file of the III Additional District Judge, City Civil Court at Chennai.



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In all CRPs

For Petitioner : Mr.G.Sundaram

For Respondent : Mr.C.A.Diwakar

COMMON ORDER

Aggrieved by the order allowing the petitions to reopen the case and to recall DW1 for further cross examination, the petitioner/defendant has come up with these revision petitions.

2. The respondent herein had filed a suit in O.S.No.9514 of 2010, on the file of the learned III Additional District Judge, City Civil Court, Chennai, against the petitioner seeking a direction to pay a sum of Rs.15,00,000/-(Rupees Fifteen Lakhs only) towards damages and compensation for alleged act of defamation committed by him. The suit was taken up for trial and the respondent/plaintiff closed their evidence and thereafter, the petitioner/ defendant filed the proof affidavit of his witness DW1 on 05.02.2015. He was cross examined on the same day and the suit was posted for pronouncing judgment on 09.02.2015. The Respondent has filed the applications to reopen and recall the evidence of DW1 on the very next day stating that there are various issues raised in the written statement



and DW1 has to be necessarily cross examined in all aspects.

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3. It was further averred in his affidavit that on the day of filing of proof affidavit namely on 05.02.2015, the defendant insisted the respondent/plaintiff to cross examine DW1 immediately, so that the matter can be settled. The junior counsel of the respondent had put only two questions formally in the cross examination and the cross examination was closed on the very same day and the matter was posted for judgment on 09.02.2015. If he is not allowed to cross examine DW1 in respect of the issues raised by him in his statement, he would be put to great prejudice and irreparable loss. The said application was resisted by the petitioner/defendant by filing counter. The Court below after considering the arguments of both the parties had allowed both the applications on payment of Rs.500/- each payable to the District Legal Services Authority. Aggrieved by the said order, the petitioner/defendant has come up with these revision petitions.

4. The counsel for the revision petitioner/defendant submitted that



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by filing these applications, the respondent/plaintiff is trying to drag on the proceedings and these petitions are filed after the matter is reserved for orders, hence the same is not maintainable.

5. Learned counsel for the respondent submitted that the proof affidavit of DW1 was filed on 05.02.2015 and the Junior counsel of the respondent was compelled to cross examine DW1 on the promise that the matter could be settled. The various issues raised by the petitioner/defendant in his written statement has to be tested in cross examination by respondent/plaintiff and hence opportunity shall be given to the respondent to reopen and recall the evidence of DW1.

6. The rival contentions of the parties were considered and perused the records.

7. It is seen from the records that the proof affidavit of DW1 was filed on 05.02.2015 and he was cross examined on the very same day. The evidence of defendant was closed on 05.02.2015 itself and the matter was



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posted for judgement on 09.02.2015. These petitions to reopen and recall the evidence of DW1 were filed by the respondent/plaintiff on the very next day namely 06.02.2015 by stating that the junior counsel was compelled to cross examine DW1 formally on the promise that the matter could be settled. Hence cross examination was not done covering various issues raised by the defendant in his written statement. After considering the rival submissions, the trial Court came to the conclusion that an opportunity shall be given to the respondent/plaintiff to cross examine DW1. The Court below also put the respondent herein on terms by directing him to pay a cost of rupees five hundred in each petition to the Legal Services Authority.

8. I do not find any illegality or irregularity in the order passed by the Court below in allowing the petition to reopen the case and to recall DW1 to enable respondent/plaintiff to cross examine DW1 comprehensively with regard to all the issues involved in the suit. The Court need not be hyper technical in following the procedural law. It is well settled that the procedural law is only a hand maid of the substantive law. In order to advance the cause of justice, the Court should be liberal in interpreting the procedural law. In



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the case on hand, the trial Court which had the first hand knowledge of the sequence of events that took place on 05.02.2015, had decided to give an opportunity to the respondent/plaintiff to reopen the case and recall DW1 for further cross examination. By giving such an opportunity no prejudice will be caused to the defendant/petitioner herein. Hence, the present Civil Revision Petitions are devoid of any merit.

9. Accordingly, the Civil Revision Petitions stand dismissed.
Consequently, the connected miscellaneous petition is closed.

06.06.2022

Index :Yes/No
Internet:Yes/No
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To

The III Additional District Judge,
City Civil Court, Chennai.

S. SOUNTHAR, J.

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