



CRP.(PD).Nos.1177, 1178 & 1180 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 23.08.2022

Delivered On: 22.09.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.(PD).Nos.1177, 1178 & 1180 of 2020

and

C.M.P.Nos.6344, 6367 & 6341 of 2020

M/s.Sreshta Communications

Rep. By their Partner,

Mr.M.V.Selvan

.. Petitioner/Petitioner/Plaintiff
in all CRPs

Vs.

1. M/s. Panasonic Home

Appliances India Co. Ltd,

Spic House, Annexe, 6th Floor,

No.88, Mount Road, Guindy,

Chennai – 600 032. ..First Respondent in all CRPs

/Respondent/Defendant

2. M/s. Bagyam Wet Grinders

No.72 C, Dr.Ambethkar Road,

Velandi Palayam,

Coimbatore – 641 025. ..Second Respondent in CRP.No.1177/2020

/Respondent/Defendant



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3. M/s. Panasonic Home Appliances
India Co. Ltd,
Old No.2/1, New No.21/1,
East Vannier Street (West),
K.K.Nagar, Chennai – 600 017. ..Second Respondent in
CRP.Nos.1178 & 1180/2020
/Respondent/Defendant

PRAYER IN ALL CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India to allow the Civil Revision Petition and to set aside the Order dated 09.12.2019 made in I.A.Nos.1,2 & 3 of 2019 in O.S.No.7231 of 2014 on the file of the learned VIII Asst City Civil Judge, Chennai.

For Petitioner
in all CRPs : Mr.C.Auxilia Peter

For Respondents
in all CRPs : Mr.K.D.Arun Kumar for R-1

ORDER

This Petition has been filed to set aside the Order dated 09.12.2019 made in I.A.Nos.1,2 & 3 of 2019 in O.S.No.7231 of 2014 on the file of the learned VIII Asst City Civil Judge, Chennai.



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2. The Learned Counsel for the Petitioner submitted that the Petitioner in CRP.Nos.1177, 1178 & 1180 of 2020 is the Plaintiff before the trial Court. When the trial commenced, the Plaintiff had let in the evidence, the Plaintiff was cross examined. The case was posted for Defendants side evidence, the Defendants 1 & 2 did not enter the witness box. During course of cross examination of the Plaintiff as PW1, the Defendants 1 & 2 put a question whether the delivery challan was filed as document for which, PW1 had answered that the Defendants had signed the delivery challan and it had not been filed along with the plaint.

3. Subsequently, the Plaintiff searched in the office and found out the delivery challan. Therefore, the Plaintiff wanted to mark the same. Since the Plaintiff's evidence was closed, the Plaintiff had filed the petitions in I.A.Nos.1 to 3 of 2019 for re-opening the Plaintiff's evidence, for recalling PW1 and seeking permission to mark the documents. In all the three Interlocutory Applications, the Defendants who are the Respondents filed a



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counter vehemently objecting that the petition filed by the Plaintiff to re-open, re-call and seeking permission to mark the delivery challan cannot at all be accepted. It is nothing but to fill up the lacuna. After due enquiry, the Learned VIII Assistant Judge, City Civil Court, Chennai, had dismissed all the three applications. Aggrieved by the same, the Plaintiff had approached this Court by filing these Civil Revision Petitions under Article 227 of the Constitution of India.

4. It is the submission of the Learned Counsel for the Petitioner herein that the Petitioner herein as Plaintiff had filed the suit for recovery of money, the Defendants 1 & 2 had not entered the witness box. Therefore, the case was posted for arguments. They had already submitted their arguments. The Learned Counsel for the Plaintiff sought time to argue on behalf of the Plaintiff stating that the Civil Revision Petitions are pending for adjudication before this Court regarding the dismissal of the I.A.Nos.1 to 3 of 2019.

5. The learned Counsel for the Respondents had given a reply to the argument of the learned Counsel for the Petitioner that this is the third



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application by the Plaintiff. Already two petitions were allowed. The learned trial Judge had rightly dismissed the Petition by Plaintiff after P.W-1 was cross-examined in the month of February 2019. Subsequent to the cross examination, the Petitions were filed to re-open, recall and to mark documents, which were allowed. Again the Petition for similar nature was filed which was also allowed. This is the third application by the Petitioner which was rightly dismissed the CRP as having no merit and is to be dismissed. The document sought to be marked was already in the custody of the Petitioner and was not marked. It is not the Petitioner's case that this document landed in the Petitioner's hand only recently. The Petitioner cannot be permitted to reopen, recall every now and then.

6. Considering the rival submissions of the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondents and on perusal of the Order passed by the learned trial Judge, the reason stated by the learned trial Judge in dismissing the Petition to re-open, to recall and to mark documents is found unacceptable and unreasonable warranting interference by this Court. The learned trial Judge had considered the



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objection of the learned Counsel for the Respondent filed in counter. The Petitioner is the Plaintiff. It is the contention of the learned Counsel for the Petitioner that the Suit had been filed for recovery of money from the Respondents 1 and 2 as Defendants 1 and 2. The Petitioner as Plaintiff had sought recovery of money regarding contract for advertisement. Permission to mark delivery challan of photostat copy alone was filed along with the Plaint at the time of letting in evidence. The Plaintiff was unable to mark the same and the original was misplaced in the Office. Before pronouncing Judgment, while searching in Office of the learned Counsel for the Plaintiff, the delivery challan was traced out. Therefore, the Plaintiff had filed I.A.No.01 of 2019 in O.S.No.7231 of 2014 to receive the documents as filed along with the Petition, I.A.No.2 of 2019 in O.S.No.7231 of 2014 to re-open the Plaintiff side evidence and I.A.No.3 of 2019 in O.S.No.7231 of 2014 to re-call the Plaintiff side witness. On the objection of the learned Counsel for the Respondents, the learned trial Judge, VIII Assistant Judge, City Civil Court, Chennai had dismissed the petitions on the technicality of law. The Plaintiff had not stated in the affidavit that the document had been received only recently. It is the specific case of the Petitioner as Plaintiff/Petitioner in



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I.As that the photostat copy alone was filed under Order VII, Rule 14 (3) of C.P.C. The original delivery challan was misplaced in the office of the learned Counsel for the Plaintiff which was only traced out recently. Immediately, I.A.No.01/2019 was filed for the inadvertance of the Counsel for the Plaintiff, the Plaintiff cannot be punished for the valuable document regarding the recovery of money on contract between the Plaintiff and the Defendants, delivery challan was issued to the Plaintiff is the proof of outstanding between the Plaintiff and the Defendants. If the Petition is dismissed, the claim of the Plaintiff regarding recovery of money without valuable document will end up in the Judgment in favour of the Respondents/Defendants regarding that part of money for which original document could not be filed by the Plaintiff. Therefore, the Plaintiff will suffer miscarriage of justice. Therefore, the reasons stated by the learned Assistant Judge – VIII, City Civil Court, Chennai dismissing the Petition cannot be treated as a well-reasoned Order. Considering the final out-come of the result and the nature of the Suit, it had prevented the Plaintiff from marking the valuable document. Therefore, to meet ends of justice, this Civil Revision Petition is to be allowed under the Article 227 of Constitution



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of India. Therefore, the contention of the learned Counsel for the Respondents/Defendants are rejected.

In the result, the ***Civil Revision Petitions are allowed.***



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The Order passed by the learned Assistant City Civil Judge - VIII, Chennai in I.A.Nos.1,2 & 3 of 2019 in O.S.No.7231 of 2014 dated 09.12.2019 are set aside. Consequently, connected Miscellaneous Petitions are closed. No costs.

22.09.2022

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The learned Assistant Judge – VIII,
City Civil Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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Pre-delivery Order made in
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