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C.R.P. Nos.1708 of 2019 and 2573 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2022

DELIVERED ON : 05.12.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. Nos.1708 of 2019 and 2573 of 2017

and

C.M.P.Nos.10960/2019 & 12282/2017

CRP.1708 of 2019:

Babu Neelagandan

..Petitioner/defendant

Vs

Tamilarasi

..Respondent/plaintiff

CRP.No.2573 of 2017:

Babu Neelagandan

..Petitioner/defendant

Vs

Tamilarasi

..Respondent/Plaintiff

Prayer in CRP.No.1708 of 2019:-

Civil Revision petition filed under Article 227 of Constitution of India, as against the order dated 06.03.2019 in I.A.No.343 of 2019 in O.S.No.149/2015 pending on the file of III Additional Sessions Court, Vridhachalam, Cuddalore.



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Prayer in CRP.No.2573 of 2017:-

Civil Revision Petition filed under Article 227 of Constitution of India, as against the order dated 14.02.2017 in I.A.No.976 of 2016 in O.S.No.149 of 2015 pending on the file of III Additional Sessions Court, Vridhachalam.

COMMON ORDER

The impugned order in CRP.No.1708 of 2019 is the dismissal order passed by the learned Judge, trial court, whereby the prayer of the defendant to receive additional written statement under Order 8 Rule 9 of CPC is rejected.

2. In the other CRP.No.2573 of 2017, the defendant / revision petitioner herein challenges the order of the trial court passed in IA.No.1499 of 2016 whereby the learned Judge directed the defendant/revision petitioner to execute security in favour of the petitioner/plaintiff as a precondition to set aside the exparte order passed against him.

3. The facts necessary for the disposal of the above civil revision petitions is as follows:-

(a) The revision petitioner in both CRPs is the defendant. The



respondent is the plaintiff. The plaintiff filed suit for recovery of money to the tune of Rs.32,00,000/- against the defendant. Defendant filed written statement denying the averments and submitted that he paid the entire amount as per the compromise agreement dated 23.02.2013.

(b) A perusal of the dates and events of the proceedings before the trial court would go to show that the matter has been posted for defendant side arguments and since already he was set exparte on 21.03.2016 and no petition filed to set aside the exparte order, defendant was directed to furnish security to the suit claim.

(c) As far the prayer of the defendant to file additional written statement in the suit has been dismissed by the learned Judge is concerned, it is found by the learned Judge that the submissions made in the additional written statement are totally contrary to the written statement already filed in the suit, further, after cross examination of the plaintiff, based on the evidence, some new averments has been given in the additional written statement which has not been stated in the written



statement and as such, the learned Judge dismissed the said petition and rejected the additional written statement.

4. The learned counsel for the revision petitioner/defendant would submit that an earlier agreement dated 14.11.2011 has been suppressed by the plaintiff , which document would prove that the transaction amount was only Rs.10,00,000/- and the said pleading was not put forth by the defendant at the time of filing the written statement. So I.A.No.343 of 2019 has been filed to receive additional written statement, immediately after the cross examination of P.W.1 and the same was dismissed by the trial court on the grounds that additional written statement should not introduce new submission, it should not be filed after commencement of trial, cross of P.W.1, and the said additional written statement has been filed after 4 years. The learned counsel for the revision petitioner would submit that the said findings for the dismissal of the I.A., is no longer a good law. Under Order 8 Rule 9 CPC gives wide discretion to the court to give chance to the parties to agitate their right even by raising subsequent new pleadings.



Order 8 Rule 9 CPC can be entertained can be done after commencement of trial.

5. The learned counsel for the Revision Petitioner would submit that after commencement of trial, raising new or inconsistent or substituting or altering defense, in the additional written statement can be done and in support of the said proposition, the learned counsel relied on the following citations:-

- 1.Muthusamy Vs. Thangaraj [2005 (5) CTC 785]
- 2.Thiyagarajan Vs. Manivannan 2007 -1-L.W.429
- 3.Baldev Singh Vs. Manoharsingh [2006] 6 SCC 498
- 4.P.Saraswathi Vs. C.Subramaniam 2013 5 L.W.639
- 5.Umapathy Odayar Vs. Lakshmiammal [CRP.3440 of 2012 dated 14/2/2018]

6. The learned counsel would also submit that delay in filing additional written statement can also be allowed in the interest of justice and the suit being a money recovery based on agreement, it is necessary for the petitioner/defendant to prove his case with all the materials available in support of his case. He further submits that no prejudice



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would be caused to the respondent/plaintiff if the additional written statement is allowed.

7. In CRP.No.2573 of 2017, the learned counsel for the petitioner would submit that the revision petitioner/defendant was set exparte in the suit as well as in the I.A. and posted for enquiry on 27.04.2016 and adjourned to 13.06.2016 and thereafter the case was transferred to learned Additional District Judge, Virudhachalam. The defendant after receiving notice from ADJ, Virudhachalam, found that he was set exparte in I.A.No.976 of 2016. Therefore, the defendant filed petition in I.A.No.977 of 2016 to set aside the exparte order and the same was allowed on 06.10.2016. The defendant also filed I.A.No.1499 of 2016 to set aside the exparte order passed in I.A.No.594 of 2016 dated 21.03.2016. The said I.A.No.1499 of 2016 was allowed on 14.02.2017 setting aside the exparte order on condition to furnish security in favour of the plaintiff. According to the defendant/revision petitioner, the said order directing to furnish security was passed without any enquiry.



8. The learned counsel for the revision petitioner/defendant would submit that the said order directing to furnish security is assailed mainly on the ground that the court should not allow and direct to furnish security until and unless the court is satisfied that there is reasonable chance of a decree being passed in the suit against the defendant. The learned counsel relied on the following citations to show that only if prima facie case is satisfied then the attachment order can be passed.

1.Raman Tech and Process Engg Co and another Vs. Sokanki Traders

(2008) 2 Supreme Court Cases 302

2. Koushik Adverting Media Vs. Poluru Gopala Krishnaiah
2010 SCC 186.

9. The learned counsel for the respondent/plaintiff on the other hand would submit that the defendant/revision petitioner filed additional written statement when the suit was in part heard stage. The reason stated for such delay is that due to oversight, some of the defence was not raised properly. The submission made by the defendant that the present suit was filed based on the compromise dated 23.02.2013 is not stated in the written statement and further when the cross examination



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of the plaintiff was over, the petition filed to receive additional written statement is not maintainable and therefore, the learned Judge has rightly dismissed the said I.A.

10. In respect of CRP.No.2573 of 2017, the learned counsel for the respondent would submit that the suit is for recovery of loan amount together with interest from the defendant who obtained loan from the plaintiff/respondent herein. There was compromise in the mediation and the defendant agreed to pay Rs.52,00,000/-. Since repayment of loan amount as agreed was not paid by the defendant/revision petitioner, plaintiff issued lawyer notice and then suit was filed. I.A.No.979 of 2016 was filed by the plaintiff for furnishing security as the defendant was trying to alienate the properties he owned. The revision petitioner/defendant called absent for continuous hearings, however filed written statement. The defendant was called absent and so he was set exparte on 21.3.2016 and since no petition was filed by the defendant to set aside the exparte order, defendant was directed to furnish security on 07.11.2016. Subsequently, in the petition to set aside



the exparte order, learned Judge directed to furnish security in favour of the plaintiff. The learned counsel would submit, the learned Judge, taking note of the facts and circumstances of the case, passed the order to execute furnish security.

11. Heard and perused the records.

12. Admittedly in the suit in O.S.No.149 of 2015, the stage of trial is cross examination of the plaintiff. At this stage, with a malafide intention of delaying the proceedings, such an application to receive additional written statement is filed. After the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial, then only such application can be allowed at any stage.

13. In view of the facts and circumstances narrated above, no reasonable cause for filing additional written statement was stated in the petition in I.A.No.343 of 2019. Therefore, the learned Judge has rightly dismissed the said petition. In view of the same, C.R.P.No.1708 of 2019



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fails and the same is dismissed.

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14.In so far as C.R.P.No.2573 of 2017 is concerned, the order directing the defendant to furnish security would categorically assert that he would produce and place the property at the disposal of the Court and and when required by the Court. A careful consideration of the order passed by the learned Judge would show that the order directing the defendant to furnish security is quite in accordance with law and calls for no interference. Accordingly, C.R.P.No.2573 of 2017 is dismissed.

15.In the result, both the C.R.P. Nos.1708 of 2019 and 2573 of 2017 are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

05.12.2022

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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To

1.The III Additional Sessions Court, Vridhachalam, Cuddalore.

2.The Section Officer, V.R.Section
High Court of Madras.



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J.NISHA BANU,J.

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