



C.R.P.No.1595 & 1620 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 27.07.2022

Delivered On : 22.09.2022

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P(PD).No.1595 & 1620 of 2021 and
C.M.P.Nos.12433 & 12554 of 2021

R.Ramkumar

... Petitioner in both CRPs

Vs.

A.Chinnamani

... Respondent in both CRPs

Common Prayer: These Civil Revision Petitions had been filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 11.03.2021 passed in I.A.Nos.1 & 2 of 2020 in O.S.No.74 of 2012 by the learned II - Additional District and Sessions Judge, Salem.

For Petitioner
(In both CRPs)

: Mr.S.S.Karthikeyan

For Respondent
(In both CRPs)

: Mr.R.Marudhachala Murthy



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COMMON ORDER

These Civil Revision Petitions had been filed to set aside the fair and decreetal order dated 11.03.2021 passed in I.A.Nos.1 & 2 of 2020 in O.S.No.74 of 2012 by the learned II - Additional District and Sessions Judge, Salem.

2.The learned Counsel for the Petitioner submitted his arguments. As per the submissions of the learned Counsel for the Petitioner, the Petitioner herein is the Defendant in the Suit in O.S.No.74 of 2012 on the file of the learned II- Additional District Judge, Salem. The Suit was filed by the Plaintiff for recovery of money. After closure of evidence, when the case came up for arguments, the Plaintiff had filed I.A.Nos.1 & 2 of 2020 to re-open and re-call witness which was resisted by the Petitioner herein as the Defendant in the Suit. The learned Counsel for the Petitioner invited the attention of this Court to the Affidavit in Page No.12, copy of which is available in the typed set filed along with the Petition. It is the case of the Respondent/Plaintiff that he had filed I.A.Nos. 1 & 2 of 2020 seeking to re-open and re-call in which he had stated as follows:



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"4. At the time of filing, I could not filed some relevant documents to prove my case which is very essential to prove my side. The defendant and his father filed O.S.No.9 of 2017 and plaintiff's Income Tax Return and already produced unmarked documents."

There is the reason for re-opening only two lines, stated no specific, no distribution of documents. The Petitioner is seeking return of document from Plaintiff in O.S.No.9 of 2017 which was filed by the Defendant as Plaintiff. The Plaintiff is a stranger to Defendant, he is a neighbour to the original person to whom the Petitioner herein was acquaintance, only to protract the proceedings, the Petition has been filed. The trial Court allowed the Petition. Therefore, the Defendant had approached this Court by filing Civil Revision Petition under Article 227 of the Constitution of India.

3. The learned Counsel for the Petitioner relied on the reported ruling of the Hon'ble Supreme Court in the case of ***Vadiraj Naggappa and others Vs. Sharad Chand Prabhakar Gogate*** reported in ***CDJ 2009 SCC 975***. As per the reported ruling, when the documents sought has not been subsequently mentioned the parties for re-call and re-open had not been



mentioned. Subsequently, when the nature of the document sought to be is also not mentioned. Subsequently, it should be full of link which cannot be permitted by the Court to the whims and fancies of the parties concerned. Therefore, after closing of the evidence when the party seeks to re-open and re-call in the Suit proceedings, if the Court is not satisfied with the reasons stated and the reasons are vague it can dismiss the Petition.

4. The learned Counsel for the Respondent submitted that in the Suit for recovery of money, Written Statement was also filed by the Defendant. The learned Counsel for the Respondent submitted that in the Affidavit filed along with the Petition for re-call and re-open, it has been subsequently mentioned that the document sought is the Income Tax Returns. Therefore, the Petitioner herein is no way prejudiced. The learned Counsel for the Respondent also invited the attention of this Court to the order passed by the learned II - Additional District Judge, Salem in I.A.Nos. 1 & 2 of 2020 order dated 11.03.2020. He had subsequently, stated that by affording an opportunity to the Plaintiff to furnish and to mark the documents, the Respondent is no way prejudiced as he can Cross - Examine the witness regarding the documents sought to be marked. It is also submitted by the



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learned Counsel for the Respondent that the Petition has been allowed on payment of cost of Rs.2,000/- to the Defendant, the Respondent herein. The learned II - Additional District Judge in the order clearly stated that the Respondent/Defendant is no way prejudiced also he had invoked against cost. He had observed that if the Petition is dismissed based on the objection of the learned Counsel for the Respondent/Defendant it may cause injustice to the Plaintiff by preventing him from marking of available document which he stressed important for the claim. By allowing this Petition, the Respondent/ Defendant can Cross - Examine the Witness. Therefore, he is in no way effected or injustice made out to him. Therefore, in the interest of justice, he had allowed the Petition. Therefore, the learned Counsel for the Respondent sought dismissal of this Petition.

5. The point for consideration is whether the Civil Revision Petition is allowed in the order passed by the II - Additional District Judge, Salem, allowing Petition I.A.Nos.1 & 2 of 2020 in O.S.No.74 of 2012 to be set aside.



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6. Considering the rival submissions the vehement objection of the learned Counsel for the Respondent/Defendant is that the Petition was filed subsequently stating that Income Tax documents were necessary to mark on the Plaintiff side. It is for the learned trial Judge to consider whether the Petitioner/Respondent who is the Petitioner in I.A.Nos.1 & 2 of 2020 specified the learned trial Judge regarding the documents sought to be marked, he had given clearly that Income - Tax Returns are necessary if the Petition is dismissed, there is no other alternative for the Plaintiff being prevented from marking documents which is relevant regarding the dispute between the Plaintiff and the Defendant in O.S.No.74 of 2012. If the Petition is allowed, the Defendant is no way prejudiced. He can always exercise his right of Cross - Examination and resist the marking of documents. On the completion of trial, if the learned Judge feels that the document that is sought to be marked is irrelevant to the dispute and the facts in issue between the Plaintiff and the Defendant, the learned trial Judge can reject the document at the stage of Judgment in O.S.No.74 of 2012. Therefore, the reasons stated by the learned trial Judge and as rightly pointed out by the Respondent in Civil Revision Petition, the Plaintiff herein that he had subsequently mentioned the distribution of the document is found acceptable



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and reasonable. Considering the nature of this case the other objection by the Petitioner herein, who was the Respondent in I.A.Nos.1 & 2 of 2020 in O.S.No.74 of 2012 that what prevented Plaintiff from marking of documents at the earliest point of time is only a technical consideration for rendering justice and trash out the dispute between the parties. The Plaintiff is to be granted the chance to prove his case. Therefore, the reliance placed by the learned Counsel for the Petitioner in **CDJ 209 SCC 975** is not helpful to the Petitioner herein.

7. Since the Suit is for recovery of money, the Income - Tax document sought to be marked is the relevant to the facts in the dispute. Therefore, the rulings relied by the learned Counsel for the Petitioner is not applicable to the facts of this case. As per the reported ruling, the learned trial Court has to use the powers under Order XVIII of C.P.C. sparingly regarding re-call of witnesses. This Court does not find any reason to interfere with the well reasoned order of the learned trial Judge.

8. Therefore, in the light of the above discussion the point for consideration is answered against the Petitioner herein and in favour of the



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Respondent/Plaintiff.

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In the result, **this Civil Revision Petition is dismissed.**

The learned II - Additional District and Sessions Judge, Salem, is directed to proceed with the trial and dispose of the Suit in O.S.No.74 of 2012 within a reasonable period of three months from the date of receipt of copy of this order, after affording an opportunity to both the parties as per law. No costs. Consequently, connected miscellaneous Petitions are closed.

22.09.2022

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order
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SATHI KUMAR SUKUMARA KURUP, J.

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Order in
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