



CRP Nos.2814 and 2815 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-12-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CRP Nos.2814 and 2815 of 2022

And

CMP No.15217 of 2022

N.Palanivelu

.. Petitioner in both CRPs

VS.

S.Santhamani

.. Respondent in both CRPs

CRP 2814 of 2022 is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in IA No.17 of 2022 in OS No.274 of 2018 dated 21.04.2022 on the file of the Sessions Judge, Fast Track Mahila Court at Namakkal.

CRP 2815 of 2022 is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in IA No.18 of 2022 in OS No.274 of 2018 dated 21.04.2022 on the file of the Sessions Judge, Fast Track Mahila Court at Namakkal.



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For Petitioner in both CRPs : Mr.R.Jayaprakash

For Respondent-1 in both CRPs : Mr.N.Manoharan

For Respondents-2 and 3 in both
CRPs : Mr.L.Monish

COMMON ORDER

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2. CRP 2815 of 2022 is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in IA No.18 of 2022 in OS No.274 of 2018 dated 21.04.2022 on the file of the Sessions Judge, Fast Track Mahila Court at Namakkal.



3. The plaintiff is the revision petitioner, who instituted a suit for specific performance.

4. It is not in dispute that the issues were framed in the suit and examination of witness were completed as of now. The suit has been now posted for arguments.

5. The learned counsel for the revision petitioner mainly contended that the Interlocutory Applications were filed to recall PW-1 and the another application for seeking to leave to mark two additional documents on the side of the plaintiff.

6. The Trial Court adjudicated the grounds raised in the Interlocutory Applications and dismissed the applications. Thus, the petitioner is constrained to move these two civil revision petitions.



7. The learned counsel for the revision petitioner mainly contended

that the additional documents sought to be marked were not in possession of the plaintiff at the time of institution of the civil suit and more specifically, the documents are pertaining to the objections raised by the plaintiff before the Sub Registrar, which are to be marked for the purpose of establishing the readiness and willingness in the suit for specific performance. Thus the documents became necessary for the purpose of establishing the case of the plaintiff and another application to recall PW-1 was filed in order to mark the documents and thus the Trial Court has committed an error in considering these two applications, which were filed within the scope of Order VII, Rule 14 of the Code of Civil Procedure.

8. The revision petitioner states that in the event of not permitting the plaintiff to file such documents by recalling PW-1, the plaintiff would be prejudiced and thus the revision petitions are to be allowed.



9. In support of the said contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of **U.N.Krishnamurthy vs. A.M.Krishnamurthy [2022 SCC OnLine SC 840]**, wherein in paragraph-34, it has been held as under:-

“34. There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of Specific Performance. In His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar [(1996) 4 SCC 526] cited by Mr. Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the Plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the Plaintiff. The same view was taken by this Court in Kalawati vs. Rakesh Kumar [(2018) 3 SCC 658].”

10. The learned counsel for the first respondent raised an objection by stating that the suit Sale Agreement was dated 01.08.2012. The revision



petitioner instituted the suit in OS No.274 of 2018 on 14.11.2018, after a lapse of about six years from the date of agreement.

11. The written statement was filed on 23.07.2019 and 13.12.2020.

The issues were framed by the Trial Court on 11.12.2020. The first respondent herein filed IA No.6 of 2021 to advance the hearing on 28.12.2020. Further application for advance hearing was also filed in IA No.8 of 2021. Thereafter, due to Covid 19 spread, the case was adjourned periodically and subsequently posted for filing the reply statement and proof affidavit in the year 2021.

12. The first respondent filed CRP No.1993 of 2021 for speedy disposal of the suit and this Court directed the Trial Court to dispose of the suit in four months. Accordingly, all the three plaintiff witnesses were cross-examined on 23.11.2021 and the suit was posted for defence witness. The first respondent filed IA Nos.12 and 13 of 2021 for reopening of the plaintiff's side witness and recall for PW-2 and PW-3 for cross-examination on



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29.11.20221. The said Interlocutory Applications were dismissed on 16.12.2021.

13. The CRP Nos.62 and 65 of 2022 were filed against IA Nos.12 and 13 of 2021 and both the civil revision petitions were allowed by this Court on 17.02.2021. The first respondent was directed to cross-examine PW-2 and PW-3 on 31.03.2022 itself. The suit was directed to be disposed of within a period of two months by this Court. At that stage, the revision petitioner filed further Interlocutory Applications in IA Nos.16 and 17 of 2022 to recall PW-1 and permit him to file two additional documents. Both the Interlocutory Applications were dismissed and the suit was now posted for arguments and in final stage.

14. The learned counsel for the first respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of **Biraji Alias Brijraji and Another vs. Surya Pratap and Others [(2020) 10 SCC 729]**, wherein the Apex Court held that “It is fairly well settled that in the absence



of pleading, any amount of evidence will not help the party”.

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15. Relying on the said observation, the learned counsel for the first respondent reiterated that there is no pleading in the plaint made by the revision petitioner and in the absence of any such pleading with reference to the documents, he cannot now improve the case by filing such additional documents and in such an event the defendant in the suit will be prejudiced.

16. In the case of **Bagai Construction vs. Gupta Building Material Store [(2013) 14 SCC 1]**, wherein in paragraphs-14 and 15, the Supreme Court held as under:-

“14. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the



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plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of the judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order 18 Rule 17 casually set aside the order of the trial court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW 1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of court and court can exercise its discretion to permit reopening of



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evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 CPC, the plaintiff cannot be permitted.

15. After change of various provisions by way of amendment in CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is



not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.”

17. Considering the arguments, this Court is of the considered opinion that during the pendency of these civil revision petitions, the evidence of both the parties were completed and the suit is posted for arguments. The likelihood of prejudice to any one of the parties is to be considered in these civil revision petitions.



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18. The revision petitioner-plaintiff has not pleaded about the additional documents sought to be marked by filing the Interlocutory Applications. Those two documents said to have been received during the pendency of the suit.

19. In the context of the pleadings, Order VII, Rule 14 CPC denotes that “where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint”.

20. In these cases, though the revision petitioner says that it was obtained during the pendency of the civil suit, there was no specific pleading in the plaint filed. In the absence of any such pleading, the objection letter if



at all given by the plaintiff subsequently to the Sub Registrar cannot be allowed to be marked in the suit, since it would cause prejudice to the defendant and the defendant cannot re-examine the witnesses, which were already closed.

21. The suit is for specific performance and during the pendency of the arguments, the plaintiff has submitted an objection to the Sub Registrar. The purpose for which such objections were submitted need not be considered by this Court in these civil revision petitions, since it was a letter of objection given to the Sub Registrar and therefore, the same cannot be allowed to be marked i.e., after the completion of the trial in the suit. It may be possible that such objection letters are sent to the Sub Registrar in order to create further evidence during the pendency of the suit. However, it is not desirable to go into such aspects in these civil revision petitions, since the issues framed are to be considered by the Trial Court with reference to the documents and evidences available on record.



22. The Trial Court also found that the reasons stated by the plaintiff for filing Interlocutory Applications are not sound enough to consider the applications. The Trial Court further found that the fact of preferring the objection petition by the plaintiff to the Sub Registrar has also not been stated in the reply statement. There is no whisper about the objection given by the plaintiff to the Sub Registrar, Tiruchengode and the reply given by the Sub Registrar. Those documents were not produced when the plaintiff was examined as PW-1.

23. Contrarily, the plaintiff-PW-1 specifically admitted that he had not filed any objection letter to the Sub Registrar, Tiruchengode. Thus seeking permission to mark the said objection letter subsequently and more-so, after closing of PW-1 evidence cannot be accepted. Accordingly, the Trial Court dismissed the Interlocutory Applications filed by the revision petitioner.

24. This Court do not find any infirmity or perversity in respect of the findings made by the Trial Court, while dismissing the Interlocutory



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Applications.

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25. Accordingly, the Civil Revision Petitions stand dismissed.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

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Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

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S.M.SUBRAMANIAM, J.

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To

The Sessions Judge,
Fast Track Mahila Court at Namakkal.

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