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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 401 of 2017

Dr.C.Nagarajan

... Respondent/Defendant/Petitioner

-Vs-

M/s. Express Publication (Madurai)
Limited, Rep, by its
General Manager (Legal)
Mr.N.Gopalan
Registered Office: Express Gardens
No.29, Second Main Road
Ambattur Industrial Estate, Chennai
and at No.52, E.V.K.Sampath Road
Anaikar Abdul Shakoor Avenue
Vepery, Chennai – 600 007.

... Petitioner/Plaintiff/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, challenging the Judgment and Decree passed by the V Assistant Judge, FA/C, II Assistant City Civil Judge, Madras, in I.A.No. 15942 of 2015 in O.S.No. 1280 of 2014 dated 11.11.2016.



For Petitioner : Mr. D.Prabhu Mukunth Arunkumar

For Respondent : Mr. S.Mothilal

ORDER

The Revision Petition has been filed questioning the order in I.A.No. 15942 of 2015 by the learned II Assistant City Civil Judge, Chennai, dated 11.11.2016 in O.S.No. 1280 of 2014.

2. The defendant is the revision petitioner herein. The respondent/plaintiff had filed O.S.No. 1280 of 2014 for recovery of money. The petitioner/defendant joined issue and filed written statement, necessitating the Court to frame issues for trial. Trial commenced. Respondent / plaintiff examined one Mr.V.Ganesh as PW-1. He adduced evidence in chief by filing proof affidavit. He has also been cross examined.

3. The matter is now posted for further cross examination of the said Mr.V.Ganesh. At that stage, the respondent/plaintiff filed an application under Section 151 of CPC to eschew the evidence of Mr.V.Ganesh and



permit the respondent/plaintiff to adduce fresh evidence through the Accountant, General Accounts Department, Mr.V.Nagasubramanian. It has been specifically stated that this evidence is to replace the evidence already recorded on PW-1.

4. This was contested by the revision petitioner/defendant.

5. The learned Judge examined the records and the dates on which the examination of the witness had taken place and stated that PW-1 was only an Accountant of the plaintiff company and had been relieved from service and therefore, his evidence can be eschewed.

6. This reasoning is not correct. He is still alive somewhere. The respondent/plaintiff, to establish their case had taken up the option of examining a particular witness/Accountant/V.Ganesh, who according to them, knew the facts of the case. Then there was an obligation placed not only on the respondent/plaintiff to examine him further, but an obligation was also placed on the said witness to appear before the Court. It is only expected that the said witness should also pay due respect to the judicial



process. He was an employee of the respondent company, he may have left his employment. He may now be employed in another company. But the duty he owed to the Court continues. Having come forward to give his evidence in chief, he should also make himself available for cross examination and till such cross examination is completed. The Court can always issue summons to the witness. There are methods given in the Code of Civil Procedure to bring a witness to the Court.

7. The evidence already recorded cannot be substituted and another person cannot be examined as further witness to speak about the same facts. It must be kept in mind that a witness, on oath speaks about the facts directly known or perceived by him/her. Therefore, once the respondent/plaintiff had put up a particular witness in the witness box holding out that he directly knows certain facts, then the respondent/plaintiff's case rests on the evidence on such witness and such witness alone. They can examine other witnesses for corroboration of facts or for other independent facts, stated but cannot substitute the particular witness by bringing a new witness in the place of witness who has been examined in chief and who has also been substantially cross examined.



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8. The trial process should also be fair to the defendant, who had filed the written statement and had also cross examined the witness. Therefore, the order under question has to be interfered with. It is set aside.

9. An obligation is placed on the respondent/plaintiff to bring the said Mr.V.Ganesh for further evidence. The Court can also pass necessary orders to ensure the presence of the said witness. The Court should not take easy route out and eschew the evidence and examine another witness, to facilitate the respondent/plaintiff examine a further witness. This cannot be appreciated. The sanctity in a judicial process should be upheld.

10. Accordingly, this Civil Revision Petition is allowed. I.A.No. 15942 of 2015 in O.S.No. 1280 of 2014 is remanded back to the Court of the II Assistant City Civil Court, Chennai, for fresh disposal in the manner known to law. No order as to costs.

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Index: Yes/No

Internet: Yes/No.

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C.V.KARTHIKEYAN, J.

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