



C.R.P(PD)No.520 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).No.520 of 2017

and

CMP.No.2601 of 2017

The State Bank Staff Union,
Chennai Circle (Regd. No.883),
Under Trade Union Act 1926,
Post Box No.1754, State Bank Buildings,
No.84, Old No.22,
Rep. By its General Secretary,
Mr.D.Singaravelu

..Petitioner

Vs.

1.S.Viswanathan

2.The Management of
State Bank of India, Sowcarpet Branch,
Rep. By its Branch Manager,
Mr.A.Maran, No.171,
Govindappa Naicken Street,
Chennai – 600 001.

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.04.2016 passed in I.A.No.1 of 2015 in Suit No.124 of 2013 on the file of the IX Judge, Court of Small Causes, Chennai.



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For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.S.Sethuraman for R2

ORDER

The Civil Revision Petition has been filed by the 1st defendant questioning the order dated 05.04.2016 in I.A.No.1 of 2015 in O.S.No.124 of 2013.

2.The suit in O.S.No.124 of 2013 had been filed by the 1st respondent / plaintiff, who claimed a sum of Rs.8,200/- spent owing to a litigation. It is his contention that he had to pay out of his pocket and that the Union did not support him and did not reimburse that money, which he had incurred towards litigation expenses. Claiming that his litigation expenses should be defrayed by the Union. The 2nd respondent was the management. A written statement was filed by the 1st defendant / Union. Issues were framed and parties were invited to graze the witness box. The 1st respondent herein / plaintiff tendered evidence. He had also been cross-examined. When the turn of the 1st defendant / revision petitioner / the Union to tender evidence came, the named individual / the General Secretary



had already retired from service and therefore, the General Secretary, who was holding that particular post had authorized the Deputy General Secretary to tender evidence on behalf of the Union / defendants.

3.An application was filed by the 1st respondent / plaintiff that such witness should not be permitted to tender evidence and that the named individual in the cause title in the plaint, should alone depose evidence. That argument put forth had found favour with the learned IX-Court of Small Causes at Chennai, who by an order dated 05.04.2016 had allowed such application and had directed that the General Secretary, who was named in the cause title should alone tender evidence.

4.I do not understand the reasons given therefor. If at all, the defendants produce a witness, and if the witness is not competent and stands exposed during the course of cross-examination, such incompetency can be exploited to the disadvantage of the defendant. If at all there is any other competent witness, who avoids coming to the Court then, summons can always be issued to him and a process issued by the Court should be



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answered by a witness, who receive such process to tender evidence. If he does not come forward, adverse inference can be taken under illustration 'g' of Section 114 that evidence is not produced only because, if produced or if that particular individual deposes, he would depose adverse to the interest of the 1st defendant / revision petitioner herein. These are the steps to be taken during the course of trial. Such evidence can be analyzed only on conclusion of the evidence. Even before recording the evidence, the learned Trial Judge should never have come to any conclusion regarding either competency of the witness or relevancy of his evidence.

5.I would therefore, set aside the order and allow the revision petition and direct the parties to go back to the Trial Court and recommence trial. The respondent / plaintiff is at liberty, if he is of the opinion that the competent witness has not grazed the witness box, go around and issue summons to the individual, who is actually competent. I am also informed that the named General Secretary has retired from service. Therefore, there is no binding contract between him and the Union as on date and therefore, the Union also cannot force him to come as a witness. It is for the plaintiff



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to issue summons and if he answers the summons, he may be examined as a witness and also subjected to cross-examination.

6.In view of the above observations, this Civil Revision Petition is allowed. The order under revision dated 05.04.2016 made in I.A.No.1 of 2015 is set aside. The parties are directed to go back to the Trial Court. Since the suit is of the year 2013, which is nearly 9 years old, a direction is given to the IX Court of Small Causes, Chennai to bestow some importance on disposal of the suit and endeavour to dispose of the same on or before 31.10.2022. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2022

kkn

Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order



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C.V.KARTHIKEYAN, J.

KKN

To:-

The IX-Court of Small Causes,
Chennai.

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