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C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 24.02.2023

Delivered On : 06.04.2023

CORAM :

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.No.203 of 2023 & CRP SR No.17481 of 2023

and

C.M.P.No.1667 of 2023

C.R.P.No.203 of 2023

1.D.Dhanalakshmi

2.D.Samyukta

Rep. By Power Agent, Mr.B.Devaraj,

No.K4, Century Anchorage Apts,

No.29, 4th Seaward Road,

Valmiki Nagar, Thiruvanmiyur,

Chennai – 600 041.

: Petitioners/Defendants/Respondents/

Applicants

-VS-

V.Maheswari

Rep. by Power Agent,

Mr.R.Janakiraman,

No.11/2, Leonard Street,

Royapettah,

Chennai – 600 014.

: Respondent/ Plaintiff/Applicant/Respondent

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, against the Order and Decreetal order passed in I.A.No.4 of 2022 in I.A.No.3 of 2022 in O.S.No.8377 of 2021 on 23.11.2022 by the learned XXI Assistant Judge, City Civil Court, Chennai, as in charge



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

Judge of XX Assistant City Civil Court, Chennai in dismissing the Petition to set aside the *ex parte* order passed in I.A.No.3 of 2022.

CRP SR No.17481 of 2023

1.D.Dhanalakshmi

2.D.Samyukta

Rep. By Power Agent, Mr.B.Devaraj,
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-VS-

V.Maheswari

Rep. by Power Agent,
Mr.R.Janakiraman,
No.11/2, Leonard Street,
Royapettah,
Chennai – 600 014.

: Respondent/Plaintiff/Applicant/Respondent

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, against the Order and Decreetal order passed in I.A.No.5 of 2022 in I.A.No.3 of 2022 in O.S.No.8377 of 2021 on 23.11.2022 by the learned XXI Assistant Judge, City Civil Court, Chennai, as in charge Judge of XX Assistant City Civil Court, Chennai in dismissing the Petition to eschew the additional evidence.

For Petitioners : Mr.K.S.V.Prasad
in both cases
For Respondent : Mr.D.Rajagopal
in both cases



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C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

COMMON ORDER

In view of the fact that the issue involved in both the cases are one and the same, both the cases are taken up together and disposed of by a common order.

2.The Civil Revision Petition No.203 of 2023 had been filed seeking to set aside the order and decretal order passed in I.A.No.4 of 2022 in I.A.No.3 of 2022 in O.S.No.8377 of 2021 on 23.11.2022 by the learned XXI Assistant Judge, City Civil Court, Chennai, as in charge Judge of XX Assistant City Civil Court, Chennai in dismissing the Petition to set aside the *ex parte* order passed in I.A.No.3 of 2022.

3.The Civil Revision Petition in CRP SR No.17481 of 2023 had been filed seeking to set aside the order and decretal order passed in I.A.No.5 of 2022 in I.A.No.3 of 2022 in O.S.No.8377 of 2021 on 23.11.2022 by the learned XXI Assistant Judge, City Civil Court, Chennai, as in charge Judge of XX Assistant City Civil Court, Chennai in dismissing the Petition to



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

WEB COPY

eschew the additional evidence.

4.The learned Counsel for the Revision Petitioners/Defendants submitted that the landlady had filed the suit in O.S.No.8377 of 2021 on the file of the learned XX Assistant Judge, City Civil Court, Chennai. The Tenants are the Defendants in the suit. The Revision Petitioners/Defendants had taken out the property on lease and was running a School. It is his contention that during COVID-19 Lockdown, the Schools were not allowed to function till January, 2022. Primary sections of all the Schools remained closed. It is his contention that the premises taken out on lease require maintenance. Therefore, Revision Petitioners/Defendants with their own funds had carried out repairs with the permission of the landlady and it was agreed that the tenants will adjust the the maintenance expenses in the rent. The tenant had informed the landlady's Power of Attorney Agent Mr.Janakiraman in June 2021 about their intention to close the School and vacate the premises. On 02.07.2021, the Power of Attorney Agent of the landlady Mr.Janakiraman received the key of the premises. He made endorsement on the duplicate of the letter of the tenant which stated that they



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

WEB COPY

had vacated the premises and handed over the keys and that the building is in good condition. Mr. Janakiraman agreed to this and strongly recommended for repayment of advance in October-November 2021. To avoid refund of the advance and harass the tenants, the landlady filed the suit for recovery of money. On receipt of summons, the tenants as Defendants in the suit entered appearance and filed written statement disputing the contention in the plaint. Issues were framed. The suit was posted for trial. On 12.09.2022 the trial commenced before the learned XX Assistant Judge, City Civil Court. The post of the Presiding Judge of XX Assistant Court was vacant. Therefore, the learned XXI Assistant Judge was holding the Full Additional Charge of the post of the learned XX Assistant Judge. By around 11.30 a.m. the junior Counsel of the learned Counsel for the Defendants used to be present in Court and the learned Counsel for the Defendants will be appearing in the other Courts. On 12.09.2022 the Plaintiff was examined as P.W-1 in the presence of the learned Counsel appearing for the Defendants. In the course of the trial, the attempt of the Plaintiff to mark documents was objected by the learned Counsel appearing for the Defendants. The documents objected were e-mail print outs. In the light of the objections made by the learned



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

WEB COPY

Counsel for the Defendants, the learned Counsel appearing for the Plaintiffs undertook to file Certificate under Section 65 B of the Indian Evidence Act in respect of the e-mail print outs. The case was adjourned to 16.09.2022.

5. On 16.09.2022 the Junior Counsel representing the learned Counsel for the Defendants at the time of calling before the learned XXI Assistant Judge, was informed by the learned Counsel for the Plaintiffs that the Certificate under Section 65 B of the Indian Evidence Act in respect of e-mail print outs would be filed. Later, when the junior Counsel returned to the Court of the learned XX Assistant Judge, she learnt that the case was adjourned to 22.09.2022. On 22.09.2022, at the time of calling, the learned Counsel appearing for the Defendants' junior represented and the case was passed over. By around 12.15 p.m. when the learned Counsel for the Defendants came to the Court of the learned XX Assistant Judge, the learned Counsel for the Defendants was informed that the case was adjourned and case file was sent to the Court of the learned XX Assistant Judge, City Civil Court, Chennai. Before the learned XX Assistant Judge, City Civil Court, when the learned Counsel for the Defendants sought next date of hearing, he



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

was informed by the Bench Clerk that the additional proof affidavit had been filed through P.W-1 on that day the additional documents were marked and the case was adjourned to 29.09.2022 for P.W-1's cross-examination.

6.The learned Counsel for the Defendants was taken by surprise as in his absence the additional proof affidavit and additional documents had been marked. The learned Counsel for the Defendants sought copy of the same and he was furnished copy of the same. On perusal of the same, the learned Counsel for the Defendants found that the I.A.No.3 of 2022 was filed on 14.09.2022 seeking leave to file additional documents which was allowed on 16.09.2022 and those additional documents were marked on that day i.e., on 22.09.2022 as Ex.A-8 and A-11. The learned Counsel for the Defendants was dismayed and shocked by the said order and illegal procedure followed.

7.It is the submission of the learned Counsel for the Revision Petitioners who are the Defendants in O.S.No.8377 of 2021 that in I.A.No.3 of 2022 no notice was given to him for filing additional documents. The I.A.No.3 of 2022 was ordered without any notice or knowledge of their



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

Counsel, let alone hearing their objections. The copy of the Additional Proof Affidavit or copies of additional documents had not been served on the Defendants before they were taken on file, with the documents being marked as Exhibits was also not served on him. On 28.09.2022 the Defendants filed two applications in I.A.No.4 of 2022 seeking to set aside the order dated 16.09.2022 passed in IA.No.3 of 2022 and I.A.No.5 of 2022 for eschewing additional evidence in the form of Additional Proof Affidavit and additional documents marked on 22.09.2022 as Ex.A-8 to A-11. The Plaintiffs as Respondents in both the Interlocutory Applications filed counter.

8.After hearing the enquiry, the learned XXI Assistant Judge holding full additional charge as XX Assistant Judge dismissed both I.A.Nos.4 and 5 in I.A.No.3 of 2022 in O.S.No.8377 of 2021. Aggrieved by the same, the Petitioners in I.A.No.4 and 5 who are the Defendants in O.S.No.8377 of 2021 had approached this Court by way of Civil Revision Petition seeking to set aside the common order dated 23.11.2022 passed by the learned XXI Assistant Judge holding full additional charge as XX Assistant Judge dismissed both I.A.No.4 and 5 in I.A.No.3 of 2022 in O.S.No.3877 of 2022.



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

WEB COPY

9.The learned Counsel for the Revision Petitioners submitted that the Petitioners filed copy application for two copies of the order passed in I.A.Nos.4 and 5 of 2022. Instead, the Registry of the City Civil Court had issued four copies of the order passed in I.A.Nos.4 of 2022. Therefore, the Petitioners were unable to number the Civil Revision Petition filed against the dismissal of I.A.No.5 of 2022. The Civil Revision Petition filed by the Defendants against the order passed in I.A.No.5 of 2022 is yet to be numbered and remains as CRP SR.No.17481 of 2023.

10.The learned Counsel for the Revision Petitioners/Defendants invited the attention of this Court to the order passed by the learned XXI Assistant Judge as XX Assistant Judge (Full Additional Charge) which is extracted as under:

“7.Heard both. Records perused. The suit is filed in the year 2021 for the relief of recovery of money of Rs.5,36,660/- by the Respondent/Plaintiff against the Petitioner/Defendant. After filing of written statement by the Petitioner/Defendant, this Court framed issues and posted the case for trial as special list on 05.09.2022. On that day on filing of adjournment petition the trial of the case was adjourned to 12.09.2022.

8. On perusal of records, that on 12.09.2022 at the request of



WEB COPY



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

the Defendant Counsel an additional issue has been framed and thereafter, this Court received the Proof Affidavit from the Plaintiff and the Plaintiff was examined as P.W-1 and exhibit A1 to A7 were marked without having any objection by the Petitioner/Defendant Counsel and the case was adjourned on 16.09.2022.

9.Further that on 16.09.2022, there was no representation on the side of the Petitioner/Defendant. The Plaintiff Counsel filed an application Order 7, Rule 14(3) of CPC to condone delay to receive the additional document. The said application was numbered as I.A.No.3/2022. The said application was allowed on the same day by passing speaking order that subject to proof and relevancy of the document, this Court inclined to allow the petition. The objection to the document shall be raised during examination of witness. Accordingly, "this application was allowed." Further there was no representation on the side of the Defendant on the above day. The Petitioner was not challenged the order passed in I.A.No.3 of 2022 by way of filing appeal or revision. The said order was passed on merits. Therefore, filing of the present petition without filing an appeal or revision is not maintainable."

11.The learned Counsel for the Respondent/Plaintiff Mr.D.Rajagopal vehemently objected to the line of arguments made by the learned Counsel appearing for the Petitioners/Defendants stating that the common order passed by the learned Judge in I.A.Nos.4 and 5 of 2022 in I.A.No.3 of 2022 in O.S.No.8377 of 2021 is a well reasoned order which does not warrant any interference under Article 227 of the Constitution of India. If the Revision Petitioners/Defendants are aggrieved, they ought to have filed appeal against the order passed in I.A.No.3 of 2022. Instead, they had filed petition to set



aside the order. Also, the learned Counsel appearing for the Respondent/Plaintiff invited the attention of this Court under Order VII, Rule 14(3) which reads as under:

“14. Production of document on which Plaintiff sues or relies.—

(3) A document which ought to be produced in Court by the Plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

12. Also, he relied on the Section 122 of CPC which reads as under:

“122. POWER OF CERTAIN HIGH COURTS TO MAKE RULES.
High Courts not being the Court of a Judicial Commissioner may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subjects to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.”

13. He further relied on Rules 30, 32, 34 and 35 of Civil Rules of Practice which are extracted as under:

“(30) Contents thereof:- *Except where otherwise provided by these rules or by any law for the time being in force, an Interlocutory Application shall state only the order prayed for and shall not contain any statement of facts or argumentative matter. Every application in contravention of this rule shall be returned for amendment or rejected.*



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

WEB COPY

32. Proof of facts by affidavit:- Any fact required to be proved upon an interlocutory proceeding shall, unless otherwise provided by these rules or ordered by the court, be proved by affidavit, but the Judge may, in any case, direct evidence to be given orally; and, thereupon the evidence shall be recorded and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibit shall be prepared and annexed to the judgment.

34.Filing:- Before any affidavit is used, it shall be filed in court, but the judge may, with the consent of both parties, in case of urgency, allow any affidavit to be presented to the court and read on the hearing of an application.

35.Notice on filing:- The party filing an affidavit intended to be read in support of an application shall give not less than two days notice thereof to the other parties who shall be entitled to inspect and obtain copies of the same and file affidavits in reply; but except with the leave of the court, no further affidavit shall be filed or read.

If any party fails to give notice of filing an affidavit, the court may grant an adjournment of the hearing and order the party in default to pay the costs thereof.”

14.The learned XXI Assistant Judge, City Civil Court in charge of learned XX Assistant Judge, City Civil Court, Chennai had passed a well reasoned order whereby subject to proof and relevancy only, the documents were marked. The Revision Petitioners/Defendants can always raise objections. The learned Counsel for the Respondent/Plaintiff submitted that as per the reported ruling in **(2001) 3 SCC 1 [Bipin Shantilal Panchal vs. State of Gujarat and another]** and **1986 (1) TNLJ 1 [A.V.S. Perumal vs.**



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

Vadivelu Asari] the Revision Petition is to be dismissed.

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15.On consideration of the submission of both sides and on perusal of the ruling cited by the learned Counsel for the Revision Petitioners and the Respondent, the order passed by the learned Judge is found acceptable. It is true that the learned Judge is overloaded with the work of two Courts. Therefore, he had felt that there will not be any objection for entertaining the additional affidavit as additional examination in chief of P.W-1 marking documents on the basis of the averments in the additional affidavit as additional examination in chief since the Plaintiff is within his rights seeking permission of the Court to marking of the documents, he had felt that there will not be any objection for the petition seeking permission. Therefore, he has observed that the Respondents in I.A.No.3 of 2022 will not be prejudiced by allowing the Petition in I.A.No.3 of 2022. Also, he had observed that the Defendants as Respondents in I.A.No.3 of 2022 has chance to raise objections before proceeding with the cross-examination. Therefore, with that observation, he had allowed the I.A.No.3 of 2022.



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

WEB COPY

16.In I.A.Nos.4 and 5 of 2022 in I.A.No.3 of 2022 he had observed that the Respondent/Defendants had not preferred any appeal. Therefore, the Petition filed seeking to set aside the order passed in I.A.No.3 of 2022 seeking permission to file additional proof affidavit and seeking permission to file additional document in I.A.No.5 of 2022 were dismissed as they had not filed any appeal. The said observation of the learned Judge is not found acceptable considering the fact that the learned Counsel for the Defendants was not available at the time of filing I.A. under Order VII, Rule 14 of CPC, without notice to the learned Counsel for the Defendants, the same was allowed.

17.If the learned Judge had ordered notice and then even though when there was no objection or no counter was filed after reasonable opportunity was granted then the observation made by the learned Judge can be found to be acceptable and reasonable. Here he had stated that there was no objection. The Respondent was not present in Court. Considering the fact that the learned Counsel appearing for the parties will not be available in the



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

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Court as they will be engaged in other Courts, it is a give and take between the Court and the Bar that if the other side Counsel is not present a reasonable opportunity is to be given under the principles of fairness, equity and good conscience. It is for the parties and their Counsels to take it lightly or take it seriously. Here is the case whether the very basis of filing of the suit is resisted by the Defendants as they do not owe any money to the Plaintiff. Therefore, for every steps there will be vehement objections for the same from the Defendants. Under those circumstances, without notice the I.A.No.3 of 2022 having been allowed which causes disappointment in the mind of the litigant/the Respondent herein. It causes loss of faith on the Counsel for the Defendants by the clients, the Defendants. Therefore, as rightly pointed out by the learned Counsel for the Revision Petitioners/Defendants, the order passed by the learned Judge allowing the petition without affording opportunity to raise objections is found unacceptable and unreasonable in the light of the principles of fairness, equity and good conscience which governs the Civil Court from granting or refusing reliefs. Here it is the case that I.A.No.3 of 2022 had been filed seeking permission to file additional document and additional affidavit as



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

examination in chief of P.W-1/Plaintiff. Since the learned Counsels will be busy with various Courts, they may or may not have attended the Court on the same day. The facts and circumstances that the learned Counsel for the Respondent was taken by surprise is found justified. Therefore, the order passed by the learned XXI Assistant Judge in dismissing the I.A.Nos.4 and 5 of 2022 in I.A.No.3 of 2022 in O.S.No.8377 of 2021 is found unacceptable as per the provisions of law and in the light of the principles of fairness, equity and good conscience. Therefore, the Revision filed under Article 227 of the Constitution of India that the learned XXI Assistant Judge, City Civil Court, Chennai in charge of learned XX Assistant Judge, City Civil Court, Chennai, failed to exercise the discretion vested on him is found justified.

18.The contention of the learned Counsel for the Respondent relying on the reported ruling of the Hon'ble Supreme Court in **(2001) 3 SCC 1 [Bipin Shantilal Panchal vs. State of Gujarat and another]** is rejected as not applicable to the facts of this case, as the reported ruling is with regard to criminal trial.



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

WEB COPY

19.The reported ruling cited by the learned Counsel for the Respondent in *1986 (1) TNLJ 1 [A.V.S. Perumal vs. Vadivelu Asari]* is a case where the document was marked by consent which was agitated by Defendant in the Appeal. The Defendant as Appellant had raised the ground that the document marked by consent could not be relied by the Court as the contents of the document was not proved through oral evidence of the witness. Therefore, the suit was dismissed. The Plaintiff filed Appeal. Pending Appeal, Plaintiff as Appellant filed I.A.No.321 of 1982 to withdraw the suit with permission to file fresh suit on the same cause of action. This was vehemently objected by Defendant as Respondent in I.A.No.321 of 1982. The learned District Judge allowed the I.A.No.321 of 1982 against which C.R.P.No.918 of 1983 was filed by the Defendant. Marking of documents by consent was not adopted in this case before us. Therefore, the ruling cited by the learned Counsel for the Respondent herein in the reported ruling *1986 (1) TNLJ 1 [A.V.S. Perumal vs. Vadivelu Asari]* will not hold good and hence, rejected.

In the light of the above, **the Civil Revision Petition and the Civil**



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

Revision Petition in SR Stage are allowed. The order dated 23.11.2022 passed in I.A.Nos.4 and 5 of 2022 in I.A.No.3 of 2022 in O.S.No.8377 of 2021 is set aside.

I.A.Nos.4 and 5 of 2022 in I.A.No.3 of 2022 in O.S.No.8377 of 2021 are allowed.

The order passed in I.A.No.3 of 2022 seeking permission of the Court by the Plaintiff to adduce additional evidence and to mark additional document under Order VII, Rule 14 of CPC is also set aside. The learned XXI Assistant Judge, City Civil Court, Chennai, is requested to afford an opportunity to the Petitioners herein as Defendants in the suit to file counter and after hearing the Defendants, he may pass appropriate orders as per law. No costs. Consequently, the connected miscellaneous petition is closed.

06.04.2023

SRM
Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order



WEB COPY



C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

To

- 1.The XXI Assistant Judge,
City Civil Court,
Chennai.
- 2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai – 600 104.



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C.R.P.No.203 of 2023
& CRP SR No.17481 of 2023

SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Common Order made in
C.R.P.No.203 of 2023 & CRP SR No.17481 of 2023**

06.04.2023