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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HON'BLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

C.R.P.Nos.1606 & 1607 of 2018

and

C.M.P.No.8737 of 2018

R.Vipul Kothari

... Petitioner in both C.R.Ps.

Vs.

1. Smart Finance,
Rep. by its Partners
Respondents 3 and 4.

2. M/.Horizon Learning Systems,
Rep. by its Partners Respondents 3 & 4.

3. subhramita

4. Sowmiyaranjan

... Respondents in both C.R.Ps.

COMMON PRAYER:- These Civil Revision Petitions are filed under Article 227 of the Constitution of India against the order and decretal order passed in I.A.Nos.925 & 926 of 2017 in O.S.No.6643 of 2012, on the file of the VI Assistant Judge, City Civil Court, dated 03.03.2018.

For Petitioner	:	Mr.Avinash Wadhvan (In both C.R.Ps.)
For Respondents	:	M/s.Subhramita (In both C.R.Ps.)



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ORDER

These civil revision petitions are filed challenging the order passed in I.A.Nos.925 & 926 of 2017 in O.S.No.6643 of 2012 dated 03.03.2018 passed by the learned VI Assistant Judge, City Civil Court, Chennai, allowing the applications filed by the respondents for reopening and recalling the evidence of D.W1.

2. The learned counsel appearing for the petitioner submitted that the revision petitioner is the plaintiff in the suit and the third defendant is not an uneducated person but a medical practitioner. When she had deposed in detail and also appended her signature in the document, thereafter, it is not open to such a party to eschew the evidence because it is against her.

3. The learned counsel further submitted that the third defendant was aware as to what was reduced into writing while she was deposing in English and also the fact that her Advocate had translated every portion of her deposition into Tamil and only thereafter, she had signed the same. Hence, the trial Court cannot allow the applications on the ground that



the third respondent herein did not know to read and write Tamil.

4. The learned counsel further submitted that the suit is for recovery of money and filing of the petitions to reopen and recall the evidence of DW1 is only to drag on the proceedings as much as possible and allowing such applications, which were filed under Order XVIII Rule 17 of C.P.C to reopen and recall D.W.1 evidence for further examination in any event is contrary to law and the order of the Court below is liable to be set aside. Hence, he prays for allowing these civil revision petitions.

5. The third respondent/third defendant appeared as party-in-person and also filed an affidavit dated 09.10.2023 as directed by this Court, in which it is stated that the fourth respondent is her husband and she is authorised to represent him in the present case. The third respondent also submitted that the second respondent (Horizontal Learning Systems) is an unregistered partnership firm and it ceased to carry on any activities since 30.04.2008, since then the activities are carried out through the first respondent (Smart Finance), which is a registered partnership firm.



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6. The third respondent further submitted that since all the questions were asked in Tamil and the same was recorded by the Judge in Tamil, she was not in a position to understand. Hence, she filed the petition under Order XVIII Rule 17 of C.P.C. to reopen and recall D.W.1 evidence and therefore, the Court below has rightly allowed the applications.

7. The third respondent further submitted that she is unable to understand Tamil, official language in the Court below is Tamil, her deposition has been translated into Tamil and was not aware of what was reduced into writing while she was deposing in English. Only after obtaining certified copies of the deposition, her present advocate translated every portion of her deposition into English and only then, she came to know that the verbatim of her statement is not reflected, when the deposition was reduced into writing in Tamil. Hence there is every necessity for clarifying certain portions of the deposition, which are ambiguous in nature, since the burden is heavily on her shoulders to prove that she is not liable to pay even a single pie to the revision



petitioner herein, owe a duty to the Court below to discharge the said burden. Hence, in the interest of justice, it is necessary that her evidence has to be reopened or otherwise she will be put to great hardship and loss.

8. The third respondent further submitted that she was examined as DW1 and filed the proof affidavit on 02.07.2015. But the revision petitioner/plaintiff took several adjournments for cross examining her and was examined only in a piecemeal manner on various occasions ending with 30.10.2017. Therefore, the plaintiff has taken more than two years for completing the cross examination. She further submitted that time limit may be fixed by this Court for disposing the suit in O.S.No.6643 of 2012 on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

9. Heard both sides and perused the materials available on record.

10. In the case on hand, it is an admitted fact that the third respondent/third defendant belongs to State of Odisha and she knows



only Oriya and English. The questions were asked to her in English and she replied in English and the learned trial Judge recorded the same in Tamil and according to her, what she has stated in English when translated by the learned trial judge and while dictating there is some ambiguity with regard to some portions of her statement which are not reflected when a deposition was reduced into writing in Tamil. She came to know only after obtaining the certified copies of deposition, when the same was translated to her in English by her counsel. This is the reason for filing the petitions in I.A.Nos.925 & 926 of 2017 to reopen and recall D.W.1 evidence. Considering the reason stated in the affidavit filed in support of the I.As., the Court below was inclined to allow the applications filed under Order XVIII Rule 17 of C.P.C. **The third respondent, party-in- person is not in a position to say which portion of her statement, she wanted to give fresh evidence and since the evidence was recorded nearly five years ago, she is not in a position to obtain the same from her counsel due to some difficulty.**

11. As rightly pointed out by the learned counsel appearing for the petitioner, since the third respondent, party-in-person is not in a position



to say which portions of her deposition are ambiguous in nature, for which she wanted to reopen and recall the evidence of D.W1, on this ground, the order passed by the trial Court in I.A.Nos.925 & 926 of 2017 has to be set aside.

12. For the foregoing reasons, the order passed in I.A.Nos.925 & 926 of 2017 in O.S.No.6643 of 2012 dated 03.03.2018 passed by the learned VI Assistant Judge, City Civil Court, Chennai, is liable to be set aside and the same is hereby set aside.

13. Since the learned counsel appearing for the petitioner and third respondent appearing in person submitted that time frame may be fixed for disposal of the main suit, accepting the above submission and considering the fact that the suit is of the year 2012, already twelve years have lapsed, the learned VI Assistant Judge, City Civil Court, Chennai, is hereby directed to dispose of the suit in O.S.No.6643 of 2012 within a period of three months from the date of receipt of a copy of this order.

14. In the result, the civil revision petitions stand allowed with the above direction. No costs. Consequently, connected miscellaneous



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petition is closed.

Index : No

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Internet : Yes

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To

The VI Assistant Judge, City Civil Court, Chennai.

J. SATHYA NARAYANA PRASAD, J.

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