



C.R.P.No.1405 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 1405 of 2023

and

C.M.P.No. 9444 of 2023

R. Paramasivan

.. Petitioner

Vs

D. Raja

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.03.2023 in I.A.No.3 of 2023 in C.O.S.No.100 of 2022 on the file of the Commercial (Senior-Civil Judge) at Salem.

For Petitioner : Mr. V. Sekar

For Respondent : Mr. S.Kalyanaraman



C.R.P.No.1405 of 2023

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A. No. 3 of 2023 in C.OS. No. 100 of 2022, on the file of the Commercial (Senior Civil Judge), Salem, the defendant preferred this revision.

2. Before the trial Court, the defendant filed application to receive the documents under Order 11 Rule (1) 10 of Commercial Court Act, 2015. The said application was objected by the plaintiff stating that the defendant who is the Power of Attorney of the chairman was not authorised to give evidence and to mark documents without proper adjudication of the Chairman.

3. Considering both the submissions, the trial Judge held that the person who sworn the affidavit is not a party. The alleged Power of Attorney, Babu was not produced any document to show that he was looking after the company affairs. Therefore, the trial Judge not permitted to mark the documents. Accordingly, the petition was dismissed. 4.

Challenging the said finding, the defendant preferred this revision.



C.R.P.No.1405 of 2023

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5. The learned counsel for the revision petitioner submits that before the trial Court, the suit was originally filed against the company represented by a Director Paramasivam. The said Paramasivam gave Power of Attorney to Vasudevan and he filed application to receive the documents, which is under the custody of said Babu, he is one of the director. Now, before the trial Court, plaintiff evidence was closed and defendant's evidence was posted and at that time, he filed D.W.1 chief affidavit along with the petition to receive the documents but the same has not been accepted. Along with the proof affidavit, he wants to mark document of the Power of Attorney, notice and the another letter given by the father of the plaintiff and bank statement and the notice issued by the police and the complaint.

6. All the documents is of the year 2021. Therefore, mere marking of document through DW.1 would not amount to admission of the documents. Therefore, if opportunity is not given to the petitioner / defendant - DW.1 to adduce those documents, his valuable right to defend the case will be defeated. The trial Judge without appreciating the legal



C.R.P.No.1405 of 2023

aspects, erroneously declined to receive the said documents as such is erroneous and liable to be set aside.

7. Accordingly, the order passed by the trial Judge in I.A.No.3 of 2023 in C.O.S.No.100 of 2022 dated 03.03.2023 is set aside and DW.1 is permitted to mark the documents on his side. Liberty is given to the respondent / plaintiff to raise all his objections as per the manner known to law at the time of trial and the validity of the documents can be decided only after completion of the evidence.

8. In the result, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

17.10.2023

Index :Yes/No
Neutral Citation :Yes/No
AT



C.R.P.No.1405 of 2023

To
The Commercial (Senior-Civil Judge) at Salem.



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C.R.P.No.1405 of 2023

T.V.THAMILSELVI, J.

AT

C.R.P.No. 1405 of 2023 and
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