



C.R.P.Nos.2144 and 2145 of 2023 &
C.M.P. Nos.13061 and 13064 of 2023 &
Caveat Nos.3044 and 3045 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**C.R.P.Nos.2144 and 2145 of 2023&
C.M.P.Nos.13061 and 13064 of 2023 &
Caveat Nos.3044 and 3045 of 2023**

E.Jayanthi ... Petitioner in both the petitions

Vs.

V.Patteswaran ... Respondent in both the petitions

Civil Revision Petitions filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 15.03.2023 in I.A.Nos.7 and 8 of 2022 in O.S.No.359 of 2016 passed by the learned V Additional District Judge, Coimbatore respectively

For Petitioner : Mr. R.Subburaj

For Respondent : Mr.K.Govi Ganesan

COMMON ORDER

Since the issue and the parties involved in both the petitions are one and the same, they are taken up together and a common order is being passed.

2. The present Revisions have been filed to set aside the fair and



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decreetal order dated 15.03.2023 in I.A.Nos.7 and 8 of 2022 in O.S.No.359 of 2016 passed by the learned V Additional District Judge, Coimbatore respectively.

3. The case of the petitioner / defendant is that the respondent / plaintiff sent a notice dated 28.9.2015, on receipt of the same, the petitioner / defendant contacted the respondent / plaintiff and enquired about the legal notice. The respondent / plaintiff replied to the petitioner / defendant that it has been sent wrongly and he will not take any steps based on the said legal notice. During the course of further cross examination P.W.1 , the petitioner / defendant's counsel raised a specific question about the same. But P.W.1 denied the same and replied that there is no phone conversation between the respondent / plaintiff and the petitioner/defendant. The P.W.1 cross examination was closed on 26.10.2022 and immediately on 1.11.2022 the petitioner/defendant had filed the petitions, viz., I.A.Nos.7 and 8 to recall and reopen defendant's side evidence for the purpose of producing telephonic conversations between the parties. After hearing both sides, the learned V Additional District Judge, Coimbatore has dismissed both applications on the ground that the present petition had been filed with the motive to fill up the lacuna and the petitioner / defendant is trying to put up a new case without pleadings. As against the same, the petitioner has filed



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the present Revisions.

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4. The Learned Counsel for the petitioner would submit that the learned Judge failed to consider the petitioner / defendant's case, facts, pleadings and averments of the written statement and dismissed the applications. When the evidence is just and necessary to decide the issues framed in the case.

5. The case of the respondent / plaintiff is that the petitions are not maintainable in law and on merits. The written statement did not mention anything about the telephone conversation. When P.W.1 was cross-examined, nothing had been discussed about the phone conversation being recorded on the pen drive. These petitions have been filed when the case was adjourned for arguments after the conclusion of evidence from both sides. These petitions have been filed by the petitioner / defendant only to fill up the lacuna and moreover, the petition does not fulfil the procedures and conditions laid down in Section 65(b) of the Indian Evidence Act. It is not possible to give oral evidence in respect of defence not stated in the written statement. The case has been pending since the year 2016. The case was adjourned from 19.04.2022 for evidence of the petitioner / defendant. Therefore, prayed that the petitions should be dismissed.



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6. Heard the learned counsel on either side and perused the documents placed on record.

7. Originally the respondent/plaintiff filed a suit directing the petitioner/defendant to receive the balance sale consideration amount of Rs.2,00,000/- within a time and direct the petitioner / defendant to execute a sale deed in favour of the respondent / plaintiff based on the alleged agreement dated 13.11.2014. The petitioner has contested the case by filing the written statement and had specifically taken a stand that he never executed the alleged sale agreement.

8. Now, the Point that arises for consideration are:

“Whether the trial court was right in rejecting the applications filed by the petitioner under Order 18 Rule 17 read with Section 151 CPC”.

9. It is necessary to extract the provisions of Order 18 Rule 17 CPC, which are reproduced hereinbelow:-

“17. Court may recall and examine witness. -

The Court may, at any stage of suit, recall any witness who has been examined and may (subject to the law of evidence for the time being in force), put such questions to him as the Court thinks fit.”

10. In Ram Rati vs. Mange Ram and Ors. (23.02.2016 - SC) the



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Hon'ble Apex court held as follows:

Order 18 of Code of Civil Procedure deals with hearing of the suit and examination of witnesses. By an amendment introduced thereunder with effect from 01.02.1977, Rule 17A was introduced permitting production of evidence not previously known or which could not be produced despite due diligence. It appears, the amendment only caused unnecessary protraction of the litigation, and hence, the said provision was omitted by The Code of Civil Procedure (Amendment) Act, 1999 with effect from 01.07.2002. However, Rule 17 was retained which reads as follows:

“17. Court may recall and examine witness.- The court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the court thinks fit.

11. The Respondent filed the application Under Rule 17 read with Section 151 of the Code of Civil Procedure invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power Under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. No prejudice is caused to either party is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the court but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.

In the case of K.K. Velusamy Vs. N. Palanisamy reported at (2011) 11 SCC 275 the Hon'ble Supreme Court had discussed the power of the Court under Order 18 Rule 17 of CPC. It was held that this power is only for clarification i.e. to enable Court to clarify any issue or doubt, it may have in regard to evidence led by parties by recalling any witness so that the Court itself can put questions to such witness and elicit answers. The relevant paras 9, 10 and 19 read as



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under:

“9. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

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19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

<https://www.mhc.tn.gov.in/judis> 11. From the above it is clear that Order 18 Rule 17 of the Code is



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not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

12. In the present case on hand on perusal of records it has been seen that initially PW 1 was examined on 29.09.2021 and Exhibits P1 to P4 were Marked. On 20.10.2021, P.W.1 was cross-examined by the petitioner/defendant. On 24.11.2021, P.W.2 was examined. On 16.12.2021, P.W.2 was cross-examined. Further, the case was adjourned to 05.01.2022, 08.02.2022, 16.02.2022, 22.02.2022 for evidence of the petitioner/defendant. The Petitioner/defendant had filed I.A No.2 of 2022 and I.A.No 3 of 2022 to reopen respondent / plaintiff's evidence and to further cross-examine PW1 .Those petitions were allowed on 16.03.2022. On 07.04.2022 P.W.1 was again cross-examined by the petitioner/respondent. The case was again adjourned to 19.04.2022 26.04.2022, 08.06.2022, 15.06.2022 for evidence of the petitioner /



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defendant. The Petitioner/defendant filed a Petition I.A. No. 4/2022 seeking permission to file additional documents and the Petition was allowed by the trial court on 15.06.2022. On 15.06.2022 DW.1 was investigated and documents D.1 and D.2 were Marked. On 05.07.2022 DW1 was cross-examined and the evidence of the defendant was concluded. The Petitioner/defendant further filed I.A No. 5/2022 and I.A.No. 6/2022 seeking permission to recall P.W.1 for further cross-examination and the same was also allowed on 20.07.2022. On 26.10.2022 P.W.1 was again cross-examined on behalf of the petitioner/defendant. When the case was adjourned to 02.11.2022 for arguments, these petitions have been filed by the petitioner/respondent for third time to recall and reopen P.W.1 evidence.

13. The above facts would elucidate that sufficient opportunities were given to the petitioner to let in her evidence. When the suit was posted for arguments, the petitioner filed a petition to re-open evidence that too for the third time. Therefore, the order passed by the Court below is legal and valid in eye of law, which requires no interference in the hands of this Court.

In the result, the present Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petitions and Caveat Petitions are closed. No costs.

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Internet:Yes/No
Speaking / Nonspeaking order
ssd

To
The V Additional District Judge,
Coimbatore

V.BHAVANI SUBBAROYAN J.

ssd

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