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CRP.No. 2526 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRP.No. 2526 2023
and
CMP.No. 15652 of 2023

R. Jayaraman

... Petitioner

Versus

1.V. Vijayaragavan
2.J. Mahalakshmi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 06.03.2023 passed in I.A.No. 5 of 2023 in O.S.No. 396 of 2018 on the file of the V Additional District Judge, Coimbatore.

For petitioner : Mr.P. Saravana Sowmiyan
For Respondent-1 : Mr.Rishitha Kishan
For M/s. Vivrti Law

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 06.03.2023 passed in I.A.No. 5 of 2023 in



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O.S.No. 396 of 2018 on the file of the V Additional District Judge,
Coimbatore.

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2. The revision petitioner is the 1st plaintiff and the 1st respondent is the defendant and the 2nd respondent is the 2nd plaintiff in the original suit proceedings.

3. The case of the petitioner/1st plaintiff is that the suit was filed by the plaintiffs in O.S.No. 396 of 2018 for recovery of money against the defendant. The defendant contested the suit by filing written statement denying all the averments made in the plaint. During the pendency of the suit proceedings, the plaintiffs have filed I.A.No. 5 of 2023 in O.S.No. 396 of 2018 under Order 16 Rule 1 of CPC., seeking to permit the plaintiffs to summon and to examine the witness, namely, one Viswanathan. After perusing the records, the Court below dismissed the petition by order dated 06.03.2023. Aggrieved by the said order, the present Civil Revision Petition has been filed by the 1st plaintiff.

4. Heard both sides and perused the materials placed on record.



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5. On a perusal of the records, it is seen that originally the suit was filed by the plaintiff for recovery of money against the defendants. Subsequently, the suit has been posted for plaintiffs' side evidence. While pending the suit, many disputes have been made between the 1st plaintiff and the defendant. According to the 1st plaintiff, he was examined as PW1 and the case was posted for further witness on his side in order to prove his case against the defendant, hence, it is necessary to examine one R.Viswanathan as a witness on his side regarding the aforesaid litigations. It is also seen that the witness knows all money transactions and other family matters related to the above case. The said witness is relevant to the above suit for a proper and full-fledged adjudication. Therefore, it is necessary to examine the witness mentioned in the petition. Hence, he prayed to set aside the findings of the Court below.

6. It is further seen that one R.Viswanathan, is an opposite party to the petitioner. In fact, the witness has filed a suit in COS.No. 14 of 2020 against the petitioner to recover a sum of Rs.42,51,658/-. The petitioner has in his proof affidavit filed in the suit stated that இதில் இருந்தே

பிரதிவாதி மற்றும் அவரது தந்தை விஸ்வநாதன் ஆகியோரது கூட்டுச்சதி மற்றும் மோசடி எண்ணம்



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தெளிவாக தெரிகிறது.

It is clear that the father and son are together and

attempting to cheat the petitioner. While that being the case, the petitioner is seeking to examine one Mr.R.Viswanathan, an opposite party as their witness. The petitioner has indulging in vexatious litigations to harm the respondents and his father and they are refusing to pay the money due to one R.Viswanathan, indulging in illegal activities. Now, the petitioner seeking to examine one R.Viswanathan. Further, the petitioner cannot compel an opposite party to give evidence that to when the suit filed by such party is already pending. The examination of Mr.R.Viswanathan at best can only be in the suit only filed by him in COS.No.14 of 2020 pending before the Principal District Judge, Coimbatore. Hence, this Court is not inclined to accept the claim made by the petitioner and further the said witness one R.Viswanthan has filed the suit in COS.No. 14 of 2020 against the petitioner and the same is pending before the IV Additional District Court, Coimbatore. Therefore, the said witness is not a party to the proceedings and this Court cannot compel him as a witness to give evidence. Therefore, there is no illegality or irregularity in the order passed by the Court below. Hence this Court is not inclined to accept the claim made by the petitioner and the Civil Revision Petition fails and the same is liable to be dismissed.



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7. Accordingly, the Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

22.08.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

msm

To

1. The V Additional District Judge, Coimbatore.
2. The Section Officer, High Court, Madras.

V.BHAVANI SUBBAROYAN, J.

msm



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