



C.R.P.No.3179 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM:

THE HONOURABLE Mrs. V. BHAVANI SUBBAROYAN

Civil Revision Petition.No.3179 of 2023

and

Civil Miscellaneous Petition No.19618 of 2023

P.S.R.Manokar Paul

... Petitioner

Vs.

I.Manokaran

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order dated 09.08.2023 in I.A.No.4 of 2023 in O.S.No.7601 of 2019 passed by the learned XV Assistant City Civil Court, Chennai.

For Petitioner : Mr.K.V.Babu

ORDER

This Civil Revision Petition has been filed to set aside the order dated 09.08.2023 in I.A.No.4 of 2023 in O.S.No.7601 of 2019 passed by the learned XV Assistant City Civil Court, Chennai.



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2. I.A.No.4 of 2023 was filed by the petitioner under Order XVIII Rule 17 of C.P.C., read with Section 151 of C.P.C to recall P.W.1 for cross examination in O.S.No.7601 of 2019 and the same was dismissed by the Trial Court, on 09.08.2023. Aggrieved by the dismissal of I.A.No.4 of 2023, the revision petitioner is before this Court with the present Civil Revision Petition.

3. The learned counsel for the petitioner submitted that chief examination of P.W.1 was held on 14.07.2022. Subsequently, proof affidavit was filed along with two other documents and for cross examination, the case was posted on 20.07.2022. On that day, the case was adjourned to 25.07.2022. On 25.07.2022, P.W.1 was absent and at request of the plaintiff's counsel, the case was adjourned to 03.09.2022. On 03.09.2022, also P.W.1 was absent and the case was adjourned to 13.10.2022. Thereafter, though case came up for hearing many times, P.W.1 was not present before the Court. Finally, the matter was adjourned to 27.06.2023. On 27.06.2023, the learned counsel for the defendant present and P.W.1 was present till 04.00 P.M., But there was no representation on behalf the defendant till 04.00 P.M. Hence, the evidence of P.W.1 was closed without cross examination due to fault of defendant.



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4. The Trial Court ought to have seen that P.W.1 after filing of the proof affidavit was absent on many occasions but on 27.06.2023, though the defendant's counsel was present during the calling work but after the matter was passed over, he was not in a position to turn up for cross. When he went to the Court at 04.00 p.m., by that time, the evidence of P.W.1 was closed. The Court ought to have seen that the defendant's counsel was absent only on one occasion, but P.W.1 was absent on many days. Therefore, the Court should be liberal in affording opportunity to the petitioner. If the Trial Court had given an opportunity, this long delay could have been avoided and by this time cross examination could have been completed. Hence this Court is of the view that Trial Court shall give an opportunity to petitioner herein for cross examine the P.W.1. Therefore, the order dated 09.08.2023 in I.A.No.4 of 2023 in O.S.No.7601 of 2019 is set aside. Accordingly, the Civil Revision Petition is allowed. The Trial Court is directed to reopen the evidence of P.W.1 on the next hearing date and proceed further in this matter. No costs. Consequently, connected miscellaneous petition is closed.

01.09.2023

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Index: Yes/No

Speaking Order: Yes/No



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V. BHAVANI SUBBAROYAN, J.

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To

The XV Assistant City Civil Court,
Chennai.

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