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C.R.P.No.2960 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

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THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.2960 of 2019
and C.M.P.No.19136 of 2019

G.K.Mariappan

.. Petitioner

Vs.

N.Vijayakumar

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Decreetal order dated 12.04.2019 made in I.A.No.01 of 2019 in O.S.No.80 of 2014 on the file of the Subordinate Judge, Gobichettipalayam by allowing the Civil Revision Petition.

For Petitioner : Mr.M.Guruprasad

For Sole Respondent : Mrs.B.Priya
for Mr.Duraikkan S.Phillip

ORDER

This Civil Revision Petition has been filed as against the Fair and Decreetal order dated 12.04.2019 made in I.A.No.01 of 2019 in O.S.No.80 of 2014 on the file of the Subordinate Judge, Gobichettipalayam, thereby dismissing the application filed under Order 8 Rule 9 CPC to receive the additional written statement.

2. The petitioner is the defendant and the respondent is the plaintiff. The



respondent filed a suit for recovery of money. The case of the respondent is that

the petitioner agreed to sell his property for a total sale consideration of Rs.10,00,000/- and entered into written agreement for sale on 01.08.2013. On the same day, he had received a sum of Rs.5,15,000/- as an advance and agreed to execute a valid sale deed on receipt of balance sale consideration. Though, the respondent was always ready and willing to perform his part of contract, the petitioner did not come forward to execute the sale deed. Therefore, the respondent filed a suit for recovery of money which was paid as an advance without seeking any relief for specific performance.

3. The petitioner filed a written statement by denying the execution of the sale agreement dated 01.08.2013. The further case of the petitioner is that the suit property is an exclusive property of him and he never intended to sell the same. The respondent is also a close relative of him. The petitioner was in urgent need of sum of Rs.1,00,000/- and approached the respondent herein. At the time of borrowal of the said loan, the respondent insisted the petitioner to give interest at the rate of Rs.1.50/- per month per hundred. The petitioner also agreed to pay the said interest and borrowed the loan. At the time of borrowal of loan, the respondent had obtained signature in the blank stamp paper towards collateral security. Thereafter, the respondent had manipulated the agreement



utilizing the signature obtained from the petitioner. Therefore, the said agreement is unenforceable and also it is not a registered one. After a period of five years from the date of the written statement, the petitioner filed an application under Order 8 Rule 9 of CPC, seeking permission to file additional written statement, on the ground that the respondent had set up one Gurunadhan and filed a suit in O.S.No.04 of 2016 for recovery of money and pro-note dated 24.03.2013, to the tune of Rs.4,67,140/- towards principal and interest. The petitioner had entered his appearance in the said suit and contested the said suit on various grounds. The said person is none other than the colleague of the respondent herein. Therefore, the petitioner filed an application in order to produce the xerox copy of pro-note, plaint and written statement, which may be read as part and parcel of the additional written statement.

4. A perusal of the additional written statement also revealed that mere denial of the averments made in the plaint. The learned counsel for the petitioner relied upon the Judgments of this Court, in order to substantiate his contention that the defendants can be permitted to file additional written statement, even after commencement of trial.

5. This Court held in all the Judgments that the Order 8 Rule 9 CPC does



not say that no application for receiving an additional written statement should be allowed after the trial has commenced. As per the said provisions, the discretion is given to the Court to give a chance to the parties to agitate their rights even raising subsequent plea for which the Court should not be rigid and the Court should exercise their discretion liberally when it does not affect the rights of the parties.

6. Admittedly, the respondent filed a suit only for recovery of money, which was received by the petitioner at the time of execution of agreement for sale to sell his property. However, thereafter, the petitioner did not come forward to execute the sale deed and as such the respondent filed a suit for recovery of money, on the strength of the agreement for sale. Whereas, one Gurunathan filed another suit for recovery of money to the tune of Rs.4,67,140/- on the strength of the pro-note dated 24.03.2013. In the said suit, the petitioner entered his appearance and defended the said suit on various grounds. Therefore, the plaintiff in both the suits are not the same person and the claim of money is also on different transactions. The petitioner instead of filing additional written statement in the suit filed by the respondent, can very well cross examine the respondent, in the present suit as well as he can very well cross examine the plaintiff in another suit filed by the said Gurunathan in



O.S.No.04 of 2016, in order to defend both the suits. Therefore, the plaint, pro-note and the written statement of the suit in O.S.No.04 of 2016 are no way connected to the present suit filed by the respondent herein. Therefore, no purpose would be served if the petitioner is permitted to file his additional written statement along with the plaint, written statement and the pro-note of the suit in O.S.No.04 of 2016.

7. Though, there is no bar to file an additional written statement even after commencement of Trial, it is completely discretion of the Court to allow the said petition seeking permission to file an additional written statement. The Trial Court after considering the above facts and circumstances rightly dismissed the petition for the reason that there is no connection between both the suits, agreement for sale as well as the pro-note. Therefore, there is no need to plead about the evidence to be produced.

8. Hence, the Court below had rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below and this revision is liable to be dismissed.

9. Accordingly, this Civil Revision Petition is dismissed. Consequently,



C.R.P.No.2960 of 2019

connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.



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To

The Subordinate Judge, Gobichettipalayam.

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