



CRP Nos.3416 & 3418 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:

THE HON'BLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

**Civil Revision Petition Nos.3416 & 3418 of 2023
and CMP.No.21199 of 2023**

1.Mrs.G.S.Shobana
2.Mr.G.B.Srinivasan

... Petitioners in both the cases

Vs.

Hiranya Flat Owners Association
Rep by its President Mr.Raghunandan

2.Mr.Raghunandan

3.Mr.K.Sathish ... Respondents in both the cases
Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and final decreetal order dated 25.08.2023 made in IA.Nos.8 and 9 of 2023 respectively in OS.No.7249 of 2019 passed by the VIII Assistant City Civil Court, Chennai.

For Petitioners : Mr.P.V.Balasubramaniam
for BFS Legal

COMMON ORDER

The present Civil Revision Petitions have been filed to set aside the fair and decreetal order dated 25.08.2023 made in IA.Nos.8 and 9 of 2023 respectively in OS.No.7249 of 2019 passed by the VIII Assistant City Civil Court, Chennai.



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WEB COPY 2. The brief facts of the case is as follows:-

The petitioners herein are the plaintiffs in the suit. The said suit was filed for permanent injunction restraining the defendants their men, agents, representatives, assigns, nominees and any person acting for and on behalf of the defendants from interfering in any manner with the peaceful possession and enjoyment of the schedule mentioned Flat and car parking Slot No.54 situated within the apartment complex. The defendants have also filed their written statement on 27.02.2020. During the pendency of the suit, the petitioners herein filed IA.Nos.8 and 9 of 2023 to recall and reopen the evidence of DW1. After detailed enquiry, the trial Court dismissed the said applications on 26.08.2023, challenging the same, the petitioners are before this Court with the present revision.

3. The suit was taken up for trial and posted for defendants side evidence on 23.01.2023 and IA.No.2 of 2022 was adjourned on several occasions for evidence of parties concerned and reopen petition was filed under Order 7 Rule 14. The defendants also filed reopen and recall petition, the same was allowed. On 26.07.2023, the applications in IA.No.8 and 9 of 2023 was taken up and no objection endorsed by the defendants side for



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reopen and recall and posted the matter on 07.08.2023 and thereafter the present impugned order was passed on 25.08.2023. The petition was taken up on 05.07.2023, the cross examination could not be completed and they wanted to adjourn the matter for some other day for continuation of the cross examination, the trial Court objected for the same and closed the evidence of DW1. Thereafter, the petitioners filed the IA.Nos.8 and 9 of 2023 to recall and reopen the evidence of DW1, the Court below referred to a decision of this Court in **CRP.(MD).No.1045 of 2020** in the case of **Fathima Vs. Rahamtullah and 6 others** wherein unnecessary adjournments are given the Courts have to eternally sit on the same case and the procedural opportunity cannot be abused by the parties concerned, the attitude of the petitioner plainly and painfully nonsensical and somewhere this game should end and dismissed the CRP and accordingly the trial Court Judge has taken the observation and of the view that when the parties to protract the proceedings have filed the applications one after the another. The further view is that the suit is of the year 2019 and the same has come to the argument stage and stating various reasons only to fill up the lacuna and to prolong the proceedings these applications have been filed and there is no reasons stated to dismiss the same.



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4. According to the learned counsel for the petitioner, the said cross examination could not be completed at 5.00pm and seeks time to enable the petitioner to complete the cross examination, the same was not considered by the learned trial Judge and also not considered the endorsement made by the other side counsel. That being the case, the trial Court ought to have considered the applications for recall and reopen the evidence of DW1, it is seen in the order dated 25.08.2023, the Court has erroneously stated that the cross examination of DW1 was closed as the petitioner counsel stated no further cross examination which is completely contrary to the fact, it is clearly stated that the petitioner has no other option to examine on the important issues, the cross examination could not be completed. The trial Court is of the view that four pages cross examination recorded is sufficient and these applications are filed only to protract the proceedings. It is to be noted that the evidence was recorded for only one day and according to this Court the matter involved is civil dispute in nature and if it spread over to few days it will not be a delay in proceedings, hence, this Court is inclined to grant further time to the parties to cross examine the witnesses.



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5. In the result, the civil revision petition is allowed, by setting aside the order dated 25.08.2023 made in IA.Nos.8 and 9 of 2023 in OS.No.7249 of 2019, this Court permits the petitioners to cross examine the witnesses for one day and to complete the entire examination of witness on the same day itself on the date fixed by the trial Court, the trial Court shall fix the day for petitioners to enable them to cross examine the witnesses. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
tsh

To
The VII Assistant Judge, City Civil Court, Chennai.



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V.BHAVANI SUBBAROYAN J.
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