



CRP.No.3853 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.3853 of 2023

and

CMP.No.23815 of 2023

J.Malini

... Petitioner

Versus

1. J.Anandan

2. Hemamalini

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to allow the above the Civil Revision Petition by setting aside the fair order and decretal order dated 26.09.2023 passed in I.A.No.3 of 2023 in O.S.No.1903 of 2018 passed by the XV Assistant City Civil Judge, Chennai in so far as imposing costs is concerned.

For Petitioner : Mr.B.Hari Krishnan

ORDER

The petitioner has filed this petition to set aside the order dated



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26.09.2023, passed in I.A.No.3 of 2023 in O.S.No.1903 of 2018, by the learned XV Assistant City Civil Judge, Chennai in so far as imposing costs is concerned.

2. Before the trial court he filed a suit for the relief of permanent injunction and not to cause any interference, with the common passage. The defendant also appeared and filed the written statement. Now the trial has begun and the evidence of the plaintiff is recorded. The case was posted for the evidence of DW1, as the witness had not appeared. Plaintiff's evidence was closed and posted for DW1 evidence. The matter was adjourned thereafter, to cross examine DW1. The plaintiff cross-examined D.W.1 in part and needed time to further cross examine DW1. But without giving opportunity, the evidence of the witnesses was closed with given particulars.

3. The petitioner filed I.A.No.3 of 2023 in O.S.No.1903 of 2018 and the same was allowed by the learned trial Judge, on payment of Rs.5,000/- on or before 12.10.2023 and the matter was posted on 10.10.2023. The



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plaintiff filed a memo before the trial Court stating that she has preferred CRP. But without considering the same, as the costs were not paid, the trial Court closed the evidence. Now the case is posted for arguments. He further submitted that as a plaintiff is aged about 60 years, she needs further cross examination of D.W.1 and sought time one more adjournment for further cross. But the same was not considered by the learned trial Judge.

4. On a perusal of record, it is seen that, the suit was filed in the year 2015 against the defendants. Now the suit is ripe for trial and the plaintiff's evidence was closed. Further cross examination of D.W.1 was not granted by the learned trial Judge stating that case was posted on 08.08.2023 for cross examination of DW.1 and without giving one more opportunity the evidence was closed and the case was posted for arguments on 16.10.2023.

5. Admittedly, the plaintiff is an old lady aged about 60 years, and she needs some more time to cross examin DW.1 and the same would have been considered by the learned trial Judge, as no prejudice would be caused to the defendants. If opportunity is not given to the plaintiff to cross examine



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DW.1 before the trial Court her valuable right will be defeated, and during the pendency of the CRP, the evidence was also closed and the case was posted for arguments, which shows that the learned trial Judge posted the matter for arguments in a hurried manner.

6. Therefore, the findings of the learned trial Judge is set aside and the defendant is directed to co-operate for the proceedings. Considering that the plaintiff is a senior citizen, she may be permitted to cross examine DW1 without paying costs.

7. Accordingly, Civil Revision Petition is allowed. Consequently connected Miscellaneous petition is closed. No costs.

18.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

- 1.The XV Assistant City Civil Court, Chennai.
- 2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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