IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4110 of 2023
and
C.M.P. No. 25094 of 2023

S. Ravichandran ... Petitioner

Versus

1.N. Muthukumaran
2.R. Kokulavani ...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to call for the records in I.A.No.7 of 2023 in O.S.No.371 of 2021 pending on the file of I Additional District and Sessions Court, Tiruppur and to set aside the order dated 20.09.2023.

For Petitioner : Mr. V. Ramamurthy

For Respondents : Mr. L. Abrar Md Abdullah

O R D E R

The petitioner has filed this revision petition to set aside the fair and decreetal order dated 20.09.2023 passed in I.A.No.7 of 2023 in O.S.No.371 of 2021 pending on the file of I Additional District and Sessions Court, Tiruppur.

2. Heard, Mr. V. Ramamurthy, learned counsel for the petitioner and Mr. L.Abrar Md Abdullah, learned counsel appearing for the respondents and perused the materials available on record.

3. Before the trial Court, the 1st respondent has filed the suit in O.S. No. 371 of 2021 for recovery of money of Rs.71 lakhs against the defendants. In the suit, the 1st defendant filed written statement. Now the case is posted for arguments after completion of evidence. During the pendency of the trial proceedings, the revision petitioner has filed I.A. Nos. 6 and 7 of 2023 to re-open and permit him to examine the Chartered Accountant and Assessing Officer, Income Tax Department as witnesses on his side. Both the applications were objected to by the plaintiff/first respondent herein by stating that after completion of the evidence, to fill up the lacuna, the defendant has come forward with this application and it need not be permitted.

4. Considering both side submissions the learned trial Judge held that already P.W.1 deposed about the income tax return in his evidence. When the case is posted for arguments, the first defendant wanted to examine the Chartered Accountant and Assessing Officer, Income Tax Department to prove Ex.A30 – Balance Sheet, as such it is not permissible. Accordingly, the

applications filed by the first defendants were dismissed, against which this revision is filed.

5. The learned counsel for the revision petitioner submitted that while filing written statement itself he totally denied the claim of the plaintiff and to prove his business transaction he wants to examine the Income tax officer on his side. Ex.A30 is the tax statement of the plaintiff. Ex.A31 pertaining to the financial year of 2021 along with certificate issued by the Chartered Accountant. The certificate was enclosed with Ex.A30, but on the side of the plaintiff, the author who signed the document has not been examined. Now the defendant wants to examine the concerned official, in order to prove the validity of the same. If opportunity is not given his valuable right to defend the case will be defeated.

6. Now the trial has begun and already documents were marked. It is settled proportion of law that adequate and complete opportunity must given to the defendant to examine the witnesses, but without any prejudice to the plaintiff. With respect to Ex.A.30 the learned trial Judge is empowered to pass order with respect to validity of the document while adjudicating the issues between the parties only if the author of the document is examined.

7. The learned counsel for the respondent submitted that now the case is posted for arguments on 15.07.2023. At this stage, to drag on the proceedings the revision has been preferred.

8. The objection raised by the plaintiff was also taken into consideration. Since evidence was opened, to give one more opportunity to the petitioner, this Court is of the view that the order passed by the trial Judge has to be set aside and the revision petitioner is permitted to mark the documents. Accordingly, the petitioner counsel is directed to pay batta within a period of three days from the date of this order and the learned trial Judge is directed to proceed with the case within a period of two weeks from the date of receipt of a copy of this order.

9. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

07.11.2023

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

1. The I Additional District and Sessions Judge, Tiruppur.

2.The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.

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