



C.R.P(MD)No.988 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.988 of 2023

and

C.M.P(MD)No.4601 of 2023

R.M.Arputham

...Petitioner/Petitioner/
Defendant

Vs.

Vins Educational and Health Trust,
Represented by its Secretary,
Mr.Gawaskar Vincent,
S/o.M.Vincent,
Having registered office at NMC No.314/E2
K.P.Road, Nagercoil, Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to recall PW1 for further cross examination and set aside the fair and decreetal order, dated 10.01.2023 in I.A.No.06 of 2022 in O.S.No.201 of 2018 on the file of the I Additional District Judge, Tirunelveli.

For Petitioner : Mr.G.Prabhu Rajadurai



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ORDER

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The present Civil Revision Petition has been filed to recall PW1 for further cross examination and set aside the fair and decreetal order, dated 10.01.2023 in I.A.No.06 of 2022 in O.S.No.201 of 2018 on the file of the I Additional District Judge, Tirunelveli.

2. The case was heard on the previous occasion. However, the case was adjourned at request of the learned counsel. Today also, there is a request for adjournment. The Court is not inclined to grant adjournment.

3. The petitioner is aggrieved by the impugned order, dated 10.01.2023 passed by the I Additional District Judge, Tirunelveli in I.A.No.6 of 2022 in O.S.No.201 of 2018. The petitioner is the plaintiff in the above suit filed for specific performance.

4. By the impugned order dated 10.01.2023, I Additional District Judge, Tirunelveli, has dismissed the application filed under Order 18 Rule 17 r/w Section 151 of CPC to reopen the plaintiff evidence and to recall P.W.1 for further examination. The operative portion of the order reads as under:-



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“5.This petition has been filed to recall P.W.1 for further cross-examination. It is stated that the petitioner has appointed a new counsel to contest his case and the new counsel after perusal of the deposition of P.W.1 wanted to conduct further cross-examination of P.W.1 and so this petition has been filed to recall P.W.1 for further cross-examination.

6.On the other hand the respondent strongly objected by stating that P.W.1 was examined on 09.03.2022 and he was partly cross-examined on 16.03.2022. After getting frequent adjournment P.W.1's cross-examination was completed on 24.03,2022. Thereafter further P.W.s were examined an plaintiff side evidence was closed on 22.06.2022. Then the defendant side evidence was examined and now it is posted for further D.W.s after examining 3 witnesses on the defendant's side. The petitioner filed the change of Vakalath on 22.08.2022 and the petitioner to recall P.W.1 was not filed till D.W.3 was examined.

7.The learned counsel for the petitioner referred the case law “2015(1) M.W.N(Civil) 83” and argued that the witness can be recalled or examined if it is necessary. In the above case law it is clearly discussed that order 18 Rule 17 provision enables court at any stage to recall the witnesses, who has been examined earlier to put questions to him as it thinks fit. Such power can be exercised by the Court either on its own motion or on an application filed by either party. But, it is also specifically insisted that such power is not intended to fill up omissions in the evidence of witness who was already examined. Further it is stated that the provision is not intended to enable party to recall any witness for further cross examination in chief or cross-examination or to place additional material, which could not be produced when evidence was recorded. Once witness is recalled for purpose of such clarification, court may permit parties to assist it by putting some questions.



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8. So, from the above case law it is very clear that the witness cannot be recalled and examined in chief or cross to fill up the omissions. The Hon'ble High Court in the above case laws specifically stated that if there is any clarification mentioned by the parties the witness can be recalled and that part of the clarification can be questioned and cleared. Here the petitioner have not mentioned any specific clarification regarding the evidence already recorded. Moreover, it cannot be encouraged to allow the petition to recall the witnesses whenever a new counsel is appeared for the parties after filing change of Vakalath with consent of the prior advocate. Then the parties will have a practice of changing the advocate only to drag on the proceedings. So, this Court comes to conclusion that since the petitioner have not mentioned any specific clarification regarding the evidence already recorded to be clarified, this Court is not inclined to allow this petition which will be bad precedent in future and pave way to drag on the proceedings and the point is answered.

As a result the petition is dismissed.”

5. I do not find any merit in the civil revision petition filed by the petitioner. The impugned order passed by the I Additional District Judge, Tirunelveli on 10.01.2023 dismissing the application under Order 18 Rule 17 of C.P.C., to re-open the plaintiff's evidence and to recall P.W.1 for further examination does not call for any interference.



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6. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The learned I Additional District Judge,
Tirunelveli..

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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