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C.R.P(MD)Nos.1718 & 1719 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)Nos.1718 & 1719 of 2022

and

C.M.P(MD)No.7545 of 2022

T.Karuppaswamy

... Petitioner/Petitioner/
2nd Defendant
(In both cases)

Vs.

1.A.Hari Balakrishnan

... Respondent/1st Respondent/
Plaintiff
(In both cases)

2.S.Thangamudi

... Respondent/2nd Respondent/
1st Defendant
(In both cases)

PRAYER in C.R.P(MD)No.1718 of 2022: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed by the learned 2nd Additional District Court, Thoothukudi made in I.A.No. 03/2022 in O.S.No.51/2015 and allow the above civil revision petition.

PRAYER in C.R.P(MD)No.1719 of 2022: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and



C.R.P(MD)Nos.1718 & 1719 of 2022

decreetal order passed by the learned 2nd Additional District Court, Thoothukudi made in I.A.No.04/2022 in O.S.No.51/2015 and allow the above civil revision petition.

For Petitioner : Mr.C.Gangai Amaran
(In both cases)

COMMON ORDER

The present revision petition has been filed by the 2nd defendant in a suit for recovery of money challenging an order dismissing an application to re-call P.W.1 for further cross and to re-open the case.

2. In the above case, the plaintiff was examined as P.W.1 and his cross-examination was completed by the learned counsel appearing for D1 and D2 on 18.02.2016. Thereafter, the case was posted for the evidence of the defendants. Since the defendants have not let in evidence, the defendants' side was closed by the Court and it was posted for arguments. At this stage, I.A.No.3 of 2022 was filed for the purpose of re-calling P.W.1 for re-cross. I.A.No.4 of 2022 was filed to re-open the case.



C.R.P(MD)Nos.1718 & 1719 of 2022

3. These two applications were filed by the 2nd defendant on the ground that earlier cross-examination of P.W.1 was conducted only on behalf of the 1st defendant and therefore, P.W.1 has to be re-called for conducting re-cross on behalf of the 2nd defendant. The trial court found that the defendants 1 and 2 are represented by a single counsel and the cross-examination of P.W.1 was conducted by the said counsel on 18.02.2016 itself. On the said ground, the trial Court has dismissed the application. Challenging the same, the present revision petitions have been filed.

4. A perusal of the plaint and the affidavit filed in support of the application for re-call and re-open will clearly indicate that both the defendants were represented by a single counsel and he has conducted cross-examination of P.W.1 on 18.02.2016. Therefore, the case of the petitioner that cross-examination of P.W.1 was conducted only on behalf of D1 and not on behalf of D2 is not factually correct. That apart, cross-examination of P.W.1 was completed on 18.02.2016 and the present applications have been filed after a period of 5 years in the year 2022. Therefore, I do not find that there are any merits in the said applications. The defendant has not chosen to re-open his side of evidence when his



C.R.P(MD)Nos.1718 & 1719 of 2022

evidence was closed by the Court. However, he wants to re-cross P.W.1 on the ground that he was not cross-examined by D2, which is not factually correct.

5. Considering the above said facts, I don't find there are any merits in the revision petitions. Hence, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

27.02.2023

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

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To

- 1.The Additional District Court II,
Thoothukudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)Nos.1718 & 1719 of 2022

R.VIJAYAKUMAR ,J.

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Order made in
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