



C.R.P(MD)No.1721 of 2015

WEB CO BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2023

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THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1721 of 2015

and

M.P(MD)No.1 of 2015

D.Rajam

... Petitioner /
Petitioner / Plaintiff

Vs.

1.Devaraj
2.Anilkumar

... Respondents /
Respondents / Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 27.04.2015 and its consequential order made in I.A.No.239 of 2015 in O.S.No.340 of 2012 on the file of the I Additional District Munsif Court, Kuzhithurai by allowing this Civil Revision Petition and pass such further or other orders as this Court.

For Petitioner : Mr.A.Sivaji



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For R-1 : Died
For R-2 : Mr.D.Srinivasa Raghavan

ORDER

This Civil Revision Petition has been filed by the petitioner / plaintiff as against the order passed by the learned I Additional District Munsif Court, Kuzhithurai in I.A.No.239 of 2015 in O.S.No.340 of 2012 which was allowed on 27.04.2015. I.A.No.239 of 2015 in O.S.No.340 of 2012 was preferred by the petitioner / plaintiff seeking to reopen and re-examine the evidence of the petitioner / plaintiff. Both the learned Counsels for the petitioner and the respondents are present today.

2. The learned Counsel for the petitioner submitted that on 23.03.2015 when the case was called up for hearing before the trial Court, at the time of roll call, the petitioner's Advocate engaged another Advocate to pass over the case for filing witness schedule along with process memo. However, at about 12.30 pm the petitioner's Advocate handed over the witness schedule along with process memo to the bench clerk, also engaged another Advocate to pass over. After lunch, at the

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time of calling, it was informed that the Advocate who represented in the morning mistakenly stated that the witness schedule along with process memo not filed. So the evidence of the petitioner / plaintiff's side was closed and the case was posted for adducing defendant's side evidence. It is very much necessary for the petitioner / plaintiff to reopen his evidence, or else the petitioner / plaintiff would be put to irreparable loss and very great hardship.

3. Per contra, the learned Counsel for the respondents / defendants submitted it is only the delaying tactics of the petitioner / plaintiff and further he submitted that the submissions of the petitioner are not correct.

4. Heard the learned Counsels for the petitioner and the respondents and carefully perused the materials available on record.

5. Though the petitioner / plaintiff has made several allegations as against the trial Court, the trial Court observed that it is only the petitioner who did not appear before the trial Court when called to



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adduce plaintiff's side evidence. More over pointing out the discrepancies between the submissions made by the petitioner in her affidavit and also the arguments substantiated by the Advocate, the trial Court observed that the petitioner did not approach the Court with the clean hands. Even after such observation, on 27.04.2015 the trial Court allowed the said petition for re-opening the plaintiff's side evidence on payment of a cost of Rs.7,000/-, on condition that the said cost to be paid on or before 02.06.2015 failing which, the I.A will automatically stand dismissed.

6. Having not paid the cost and avail the opportunity of appreciating the magnanimity of the trial Court, by paying the cost promptly the petitioner remained numb allowing his I.A.No.239 of 2015 to get dismissed automatically. Thereafter he preferred to file a petition before the trial Court seeking to review the order again. In view of the allegations made by the petitioner against the trial Court, the review petition dated 02.06.2015 was rightly returned by the trial Court for five reasons on 06.06.2015, viz.,



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“(i) Petitioner's affidavit not filed.

(ii) Date of evidence is not correct.

(iii) What error or mistake on the face of record in order in I.A.No. 239 of 2015 dated 27.04.2015 not stated in the petition?

(iv) How this petition is maintainable? and

(v) This petition is not filed within time.”

7. Without rectifying those defects and representing the review petition before the learned Trial Court on time and without challenging the said return of review petition on 06.06.2015 by filing a Civil Revision Petition, the petitioner's attempt to challenge the order passed by the learned trial Court in I.A.No.239 of 2015 which was actually in his favour, which he voluntarily allowed to get dismissed automatically without paying cost on or before 02.06.2015 is highly deprecated by this Court. Such kind of delaying tactics will not be entertained by this Court, since this Civil Revision Petition is of the year 2012.



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8. This Court is of the considered view that this Civil Revision Petition warrants dismissal. Hence, the order passed by the trial Court is confirmed, thereby dismissing this Civil Revision Petition. The trial Court is directed to continue the trial as expeditiously as possible within a period of three (3) months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

03.03.2023

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

To

- 1.The I Additional District Munsif Court,
Kuzhithurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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L.VICTORIA GOWRI, J.

BTR

Order made in
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