



C.R.P.(MD)No.2835 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.11.2023

Delivered on : 24.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)No.2835 of 2023

and

C.M.P(MD)No.14839 of 2023

M.Thangamani

: Petitioner/Respondent
Plaintiff

Vs.

S.Meenakshi

: Respondent/Petitioner
Defendant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order passed in I.A.No.128 of 2023 in O.S.No.322 of 2017 on the file of the learned Additional District Munsif Court, Dindigul, dated 05.09.2023.

For Petitioner : Mr.V.Ravi,
for Mr.A.Senthil Kumar

For Respondent : Mr.N.Marimuthu



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.128 of 2023 in O.S.No.322 of 2017, dated 05.09.2023 on the file of the learned Additional District Munsif Court, Dindigul, allowing the petition to reopen the defendant side evidence.

2. Admittedly, the suit property is owned by the respondent and the petitioner is a tenant under the respondent in respect of the suit property.

3. The revision petitioner/plaintiff has filed a suit in O.S.No.322 of 2017 against the respondent claiming permanent injunction restraining the defendant from evicting the petitioner except by due process of law.

4. It is not in dispute that after the plaintiff side evidence was closed, the defendant side has informed the Court that they are not having any evidence on their side and after the closure of the defendant side evidence and when the case was posted for arguments, the above petition to reopen the defendant side evidence so as to enable the defendant to adduce evidence, came to be filed.



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5. The plaintiff has filed a counter statement raising serious objections and the learned Additional District Munsif, after enquiry, has allowed the petition for reopening the defendant side evidence. Aggrieved by the impugned order, the plaintiff has preferred the present revision.

6. The learned counsel for the revision petitioner would submit that the trial Court has not considered the objections raised by the petitioner in their counter affidavit and the above petition was filed only to fill up the omissions/lacuna and the same would prejudice the legal rights of the petitioner/plaintiff; that the trial Court erred in reopening the case, when the defendant voluntarily closed their evidence and that reopening of the case, after completion of arguments of the plaintiff side, is contrary to the settled legal position.

7. The learned counsel for the respondent would submit that after the closure of the plaintiff side evidence, since there is no dispute about the landlord and tenant relationship between the parties and there was no arrears of rent, the defendant has stated that they are not having any



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evidence; that the defendant has already filed an eviction petition in R.L.T.O.P.No.14 of 2021 and the same was pending on the file of the Principal District Munsif; that the defendant has sent a legal notice even prior to the filing of the eviction petition, for which, the plaintiff has sent a reply and that the copy of the eviction petition and the copies of notices exchanged between the parties are to be received as his side evidence to show that he had taken legal proceedings to evict the plaintiff and that the trial Court in order to give an opportunity to the defendant, has rightly allowed the petition.

8.The learned counsel for the respondent/defendant would submit that after passing of the impugned order, eviction petition filed in R.L.T.O.P.No.14 of 2021 was allowed and eviction was ordered by the Principal District Munsif, Dindigul, vide order dated 18.10.2023 and produced the copy of the said order.

9. The learned counsel for the revision petitioner/plaintiff would submit that after informing the Court and making necessary endorsement that they are not having any evidence on their side and after the closure of



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their side evidence, the plaintiff side has advanced their arguments and when the case was posted for defendant side arguments, in order to fill up lacuna/omissions, the above petition came to be filed and that therefore, the very filing of the petition to reopen the case is legally unsustainable and relied on a decision of this Court in ***Selvam Vs. P.Nagendiran and others*** in ***C.R.P.(PD)No.527 of 2018, dated 16.02.2018***, wherein the judgment of Hon'ble Supreme Court in ***Ram Rati Vs. Mange Ram (dead) through legal representatives*** reported in ***(2016) 11 SCC 296*** was referred and the relevant portion is extracted hereunder :

“ 12.In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.



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29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.”

10. Admittedly, the plaintiff has filed the suit claiming bare injunction restraining the defendant from evicting him except by due process of law. According to the defendant, he has already taken rent control proceedings for eviction and in order to show that he had taken steps to evict the plaintiff by due process of law, he has filed the above application to reopen the case so as to enable him to produce the copy of the eviction petition and the copies of the legal notices exchanged between the parties. More importantly, after passing of the impugned order the eviction petition was ordered.

11. As rightly contended by the learned counsel for the respondent, just because a party has endorsed that they are not having any evidence on



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their side, it cannot be stated that their request to adduce evidence cannot be entertained at all. Admittedly, the defendant has not examined any witness on their side and he wanted to examine himself to mark those documents.

12. The learned trial Judge, considering the above aspects and by observing that the defendant should be given an opportunity to establish their defence, has rightly allowed the petition. Considering the above, the impugned order allowing the reopen petition cannot be found fault with. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.11.2023

NCC :yes/No
Index :yes/No
Internet :yes/No
das



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To

- 1.The Additional District Munsif Court,
Dindigul.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.R.P.(PD)(MD)No.2835 of 2023
and
C.M.P(MD)No.14839 of 2023

Dated : 24.11.2023