IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.Nos.824 & 838 of 2024 and
C.M.P.No.4088 & 4138 of 2024

J.Chitrakala ... Petitioner in both C.R.Ps

Versus

1.TAFE ACCESS LIMITED,
No.43, Greams Road,
Chennai – 600 006.
Rep by its Authorized Signatory.

2.New India Assurance Limited,
No.185, SPS Limited,
Anna Salai, Chennai-600 002. ... Respondents in both C.R.Ps

PRAYER in C.R.P.No.824 of 2024: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07.09.2023 made in I.A.No.11 of 2023 in O.S.No.7065 of 2019 on the file of the XV Assistant City Civil Judge, Madras.

PRAYER in C.R.P.No.838 of 2024: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07.09.2023 made in I.A.No.12 of 2023 in O.S.No.7065 of 2019 on the file of the XV Assistant City Civil Judge, Madras.

For Petitioner
in both C.R.Ps : Ms.Sangeetha Rajkumar

For Respondents
in both C.R.Ps : Mr.Srivatsan for M/s.Surana & Surana

COMMON ORDER

Civil Revision Petitions have been filed to set aside the fair and decreetal orders, dated 07.09.2023 in I.A.Nos.11 & 12 of 2023 in O.S.No.7065 of 2019 passed by the learned XV Assistant Judge, City Civil Court, Chennai.

2.Since the petitioner and the respondents are one and the same and relief sought for is also similar, this Court disposed of both the civil revision petitions, by way of common order.

3.The petitioner/1st defendant in O.S.No.7065 of 2019 has filed I.A.No.11 of 2023 in O.S.No.7065 of 2019 to recall the petitioner for further evidence and filed I.A.No.12 of 2023 in O.S.No.7065 of 2019 to reopen the case for further evidence on the side of the petitioner. The learned XV Assistant Judge, City Civil Court, Chennai by common order, dated 07.09.2023 dismissed both the applications for the reason that there is delay in filing these applications, that too at the stage of arguments and also no justifiable reason given for the same.

4.The learned counsel for the petitioner submitted that the 1st respondent/plaintiff filed suit in O.S.No.7065 of 2019 to withhold the petitioner's vehicle *viz.,* Tata Safari Storme bearing Reg.No.TN-09-CC-9218 in lieu of sum due to the 1st respondent/plaintiff unpaid and also sought injunction restraining the petitioner herein from forcibly removing the said vehicle from the premises and the petitioner to pay a sum of Rs.1,64,000/- from the date of the plaint. The learned counsel further submitted that the vehicle of the petitioner *viz.,* TATA Safari Storme bearing Reg.No.TN-09-CC-9218 insured with the 2nd respondent *viz.,* New India Assurance Limited for the period from 18.03.2018 to 17.03.2019. The vehicle met with an accident on 21.04.2018, hence, for repair and service work, the vehicle was given to the 1st respondent/plaintiff on 23.04.2018. The repair and service work completed on 31.05.2018. The vehicle was insured with the 2nd respondent Insurance Company for accident claim. The total cost of the repair work is Rs.1,72,097/-. Out of which, the petitioner paid Rs.7,997/- leaving the balance of Rs.1,64,100/- in view of the vehicle insured with the 2nd respondent Insurance Company. Thereafter, the vehicle delivered to the petitioner. Prior to repair and service work, the Assessor of the 2nd respondent Insurance Company inspected the vehicle and gave assessment report. After getting approval from the 2nd respondent Insurance Company, the work commenced. The petitioner gave insurance details which was verified by the 2nd respondent Insurance Company and approved reimbursement of cost of repair work, and the service and repair work completed and vehicle handed over to the petitioner. This being so, the 2nd respondent Insurance Company declined the claim of the petitioner for the reason that petitioner's cheque drawn on HDFC Bank, Cenotaph Road Branch issued for renewal of insurance got dishonoured. Due to which, the reimbursement amount not paid to the 1st respondent. The petitioner informed the respondents about no laxity on her side since during the relevant point of time the marriage of the petitioner's daughter held in Singapore and she was busy with the marriage. Due to some miscalculation, the required amount not available in the bank account. Neither the bank nor the insurance company informed about dishonour of cheque. The 2nd respondent insurance company only in the month of July 2018 had written to the Regional Transport Officer about non renewal of insurance policy. For no fault on the side of the petitioner, now she is being forced to pay the repair cost to the 1st respondent.

5.She further submitted that earlier the petitioner's vehicle sent to service centre on more than two occasions for service and repair work and the same was also done. Such being the position, on the third occasion, when the vehicle sent for service, the vehicle was detained without proper claim and notice. Due to such act, the petitioner had to file complaint with the jurisdictional Police and also a complaint before the concerned Magistrate under Section 156(3) Cr.P.C., then only the vehicle returned to the petitioner. Further the petitioner also raised the issue with the 2nd respondent Insurance Company for the laxity in informing dishonour of cheque. The petitioner was under the bonafide believe that the insurance was renewed, but in any event the 1st respondent/plaintiff has got no right to detain the vehicle of the petitioner which was entrusted for service and repair work.

6.The learned counsel further submitted that the plaint itself is not maintainable, but the trial Court without proper reason had closed the evidence on the side of the petitioner/1st defendant. Hence, to probalize her defence and to prove that there is no laxity on her part and the respondents have got no right to claim from the petitioner and for retaining the vehicle, she filed the present civil revision petitions to set aside the impugned order of the trial

Court.

7.The learned counsel for the 1st respondent/plaintiff submitted that in this case, the 1st respondent/plaintiff admits that the insurance was not renewed on the day when the vehicle entrusted for service and repair work, but the petitioner made claim as though during the month of July 2018, it came to knowledge about the dishonour of cheque belatedly. For the dispute between the petitioner and 2nd respondent Insurance Company, the 1st respondent/plaintiff cannot be denied of his service and repair charges. In this case, on the date of entrusting vehicle for service, the petitioner projected as though vehicle was under the cover of insurance and given its details. The Assessor of the insurance company assessed vehicle of the petitioner and gave his approval. It was only a formal and preliminary approval. Only on scrutinizing the claim and preparing liability sheet, it came to light that the insurance not renewed by the petitioner and the cheque, dated 08.03.2018 drawn on HDFC Bank, Cenotaph Road given for renewal of insurance got dishonoured on 24.03.2018. In any event, the vehicle was not under the cover of insurance when the repair and service work was done. Hence, the petitioner is liable to pay the 2nd respondent Insurance Company or to the 1st respondent.

He further submitted that written statement filed, thereafter, issues framed and the 1st respondent/plaintiff examined and cross examined the witnesses and thereafter, the case was kept pending for defence side witnesses for several months. Finally the trial Court on 18.04.2023 finding that the petitioner had neither given the list of witness nor produced any documents, had closed the evidence on the side of the petitioner. Thereafter, I.A.Nos.11 & 12 of 2023 in O.S.No.7065 of 2019 filed and both dismissed on 07.09.2023. Now the suit which is of the year 2019 is kept pending since the petitioner represented before the trial Court citing the pendency of the present civil revision petitions before this Court. Hence, he prays for dismissal of the civil revision petitions.

8.Considering the submissions and on perusal of the materials, it is seen that the vehicle of the petitioner *viz.,* Tata Safari Storme bearing Reg.No.TN-09-CC-9218 met with an accident on 21.04.2018. The vehicle entrusted for repair and service on 22.04.2018 with the 1st respondent and the repair work completed on 31.05.2018. The Assessor examined the vehicle and gave preliminary approval. After collecting the amount of Rs.7,997/- from the petitioner and balance amount of Rs.1,64,100/- to be paid by the 2nd respondent Insurance Company, the vehicle handed over to the petitioner. In normal course, the 2nd respondent Insurance Company ought to have paid the claim by 26.06.2018 but when the liability sheet was prepared by the 2nd respondent Insurance Company found the cheque issued by the petitioner dated 18.03.2018 got dishonoured. Due to which, the insurance policy not renewed. It is to be noted that on the date of accident and on the date of repair work, the vehicle not covered under the insurance, hence, the 2nd respondent Insurance Company refused to make the payment to the 1st respondent/plaintiff for cost of repair.

9.It is also seen that there is some dispute between the petitioner and the 2nd respondent Insurance Company. In this case, these facts have been put forth by the 1st respondent/plaintiff as well as petitioner/1st defendant in their plaints. Before the trial Court, the petitioner has not given any reason to examine the witness and mark the document. Hence, the trial Court dismissed the applications *vide* order, dated 07.09.2023.

10.In view of the above, this Court does not find any merit for consideration. Accordingly, both the civil revision petitions are dismissed confirming the fair and decreetal orders, dated 07.09.2023 in I.A.Nos.11 & 12 of 2023 in O.S.No.7065 of 2019 passed by the learned XV Assistant Judge, City Civil Court, Chennai. The connected civil miscellaneous petitions are closed. No costs.

04.04.2024

Speaking order/Non-speaking order
Index: Yes/No
Neutral Citation: Yes/No

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To

The XV Assistant Judge,
City Civil Court, Chennai.

M.NIRMAL KUMAR, J.
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