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C.R.P.No.1265 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.No.1265 of 2022

T. Velayudam

...Petitioner

Vs

1. Sudha

2. Vishno Investment and Agents Private Limited,
Represented by its Managing Director,
Sudha Gupta
C-4, Siddharth Building, 14/2,
Burdwan Road, Kolkata – 700 027.
and also at
167, Settlement Deed Mary's Road,
Alwarpet, Chennai - 600 018.

...Respondents

Prayer: Civil Revision Petition filed under Section 227 of Constitution of India praying to allow the Civil Revision Petition and set aside the order and decretal order dated 16.09.2021 passed in I.A.No. 859 of 2018 in O.S.No. 206 of 2011 and O.S.No.168 of 2017 pending on the file of the Additional District Judge, Chengalpattu.

For Petitioner : Mr.T.Easwara Dhas

For R1 : Mr.M.Rajasekar

For R2 : Mr.Rahul Balaji



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ORDER

This Civil Revision Petition is preferred against the order passed in I.A.No. 859 of 2018 in O.S.No. 206 of 2011 and O.S.No.168 of 2017 on the file of the Additional District Judge, Kancheepuram District, Chengalpattu, wherein the petitioner has filed the petition for appointment of Commissioner to record the evidence of plaintiff side witnesses and the same was dismissed by the Trial Court. Aggrieved by the same, the present Civil Revision Petition is filed.

2. Accordingly to the petitioner, for the past six months he has been continuously suffering from back pain “Lumbuge”. He is not able to move, he could not either stand or sit in a particular place for more than five minutes and he is now bed ridden. Therefore in order to record the evidence of the petitioner/plaintiff, the Advocate Commissioner may be appointed.

3. According to the respondent, the petitioner is only aged about 63 years, he can sit and give evidence in the Court and the petitioner has not filed any medical records to support his sickness. Therefore, the petitioner can very well give evidence by sitting in a chair before this Court. Therefore the petition is liable to be dismissed.



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4. Before the Trial Court, no oral or documentary evidence adduced on both sides. The Trial Court after hearing both sides, dismissed the petition.

5. The learned counsel appearing for the petitioner would contend that the petitioner is aged about 63 years, he is suffering from back pain “Lumbuge”, he is unable to move and thereby he filed the petition for appointment of Commissioner to record the evidence. But the Trial Court failed to consider the same and dismissed the petition on the ground that the petitioner has not produced any documents. The above said observations made by the Trial Court is liable to be set aside by allowing this Revision petition.

6. The learned counsel appearing for the respondent would contend that the petitioner has not produced any documents to substantiate his contention that he is suffering from back pain and he is unable to move. The Trial Court also after considering that there is no sufficient evidence produced by the petitioner to prove that he was unable to appear before this Court and to sit for more than five minutes. Therefore, the order passed by the Trial Court is in order and the present Civil Revision Petition is liable to be dismissed.



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7. Heard both sides and perused the materials available on record.

8. This Civil Revision Petition is filed challenging the order passed by the Trial Court declining to appoint the Commissioner for examination of witnesses. According to the petitioner, he is aged about 63 years and he is unable to move and he is suffering from back pain therefore the Commissioner has to be appointed. According to the respondent, the petitioner has not filed any documents to show his inability to appear before this Court. The Trial Court mainly dismissed the petition on the ground that the petitioner has not produced any documents of medical records to prove his inability. Though, the petitioner has not produced any documents, considering the age of the petitioner that he is aged about 63 years, the Trial Court ought to have appointed Advocate Commissioner to record the evidence of the plaintiff. The Court need not expect strict proof for appointment of Commissioner to examine the witnesses. The Trial Court ought to have allowed the application in the interest of justice, based on the affidavit of the petitioner. But unfortunately the Trial Court has not considered the same and dismissed the



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petition for non production of the medical certificate.

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9. As far as the appointment of Commissioner to examine the witnesses is concerned, when the medical grounds is pleaded by the parties, the Court has to consider the same liberally and age of the parties also have to be taken into account. In this case, the petitioner is aged about more than 63 years and the affidavit filed by the petitioner discloses that he is very sick and unable to move. In the above said circumstances, it is appropriate to appoint Commissioner to examine the witness through Commissioner. By appointing the Advocate Commissioner to examine the plaintiff side witness, no prejudice will be caused to the respondents/defendants. Therefore the order passed by the Trial Court is unsustainable and liable to be set aside.

10. The learned counsel for the respondent also during his arguments not disputed the physical conditions of the petitioner. Therefore it is appropriate to allow this application. At the same time, suit is pending for long time therefore it is appropriate to direct the Trial Court to fix the time for examination of witnesses by the Commissioner without giving time for more than one month.

11. In view of the above said discussion, this Court is inclined to allow



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the Civil Revision Petition, accordingly the same is allowed. The order passed by the Trial Court in I.A.No. 859 of 2018 in O.S.No. 206 of 2011 and O.S.No.168 of 2017 on the file of the Additional District Judge, Kancheepuram District, Chengalpattu is set aside and the Trial Court is directed to appoint Advocate Commissioner for recording the evidence of the petitioner/plaintiff and the Commissioner is directed to complete the process within one month from the date of appointment of Commissioner.

12. With the above said directions, this Civil Revision Petition is allowed. No costs.

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Index : Yes/No

Internet : Yes/No

Citation : Yes/No

To

The Additional District Judge,
Chengalpattu.



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P.DHANABAL,J

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