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C.R.P(PD).No.3282 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P (PD).No.3282 of 2022

1.Loganathan

2.Munirathinam

M.N.Baskar (Dead)

... Petitioners

Vs.

Saleem Basha (Dead)

1.Maseeha Kathoon

2.Mahammed Zayeem

3.Azima Zaheena

4.Sara Zaheena

5.Mohammed Zabeer

6.Shammel Ahmed

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.12.2021 passed in I.A.No.3 of 2021 in O.S.No.199 of 2013 on the file of the District Munsif Court, Gudiyattam.



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For Petitioners : Mr.M.Marudhachalam

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.3 of 2021 in O.S.No.199 of 2013 on the file of the District Munsif Court, Gudiyattam, wherein, the petitioners herein have filed an interlocutory application under Order VIII Rule 9 and Section 151 of the Code of Civil Procedure, 1908, to receive the Additional Written Statement and the same was dismissed.

2. The case of the petitioners is that they are the defendants in the main suit and they already filed their Written Statement. The respondents are the plaintiffs in the suit and they amended the plaint two times and the petitioners have filed the Additional Written Statement. Thereafter, a Sale Deed was executed in the name of the sixth respondent herein during the pendency of the suit and the sixth respondent herein was impleaded as a party to the suit. Thereafter, the petitioners have filed their Additional Written Statement. At the time of filing of the Additional Written Statement, the petitioners omitted to



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mention about the important points which are involving the questions of law and facts and thereby the said facts have to be pleaded by way of Additional Written Statement. Therefore, they have filed petition before the trial Court and the same was dismissed.

3. The case of the respondents is that the respondents are the plaintiffs in the suit and they filed the suit for declaration and for consequential relief of permanent injunction. Already, a Written Statement was filed by the defendants and again on 01.06.2017, Additional Written Statement was filed by the defendants the petitioners herein. Thereafter, on 04.06.2018 another Additional Written Statement was filed and there again, the plaintiffs side witnesses were examined and then the case was posted for defendants side witnesses. Since the petitioners/defendants have not adduced any evidence, their evidence was closed and thereafter the case was posted for arguments. Subsequently, the petitioners/defendants have filed an application to reopen the case and the same was allowed and the case was posted for defendants side witnesses. Without examining any witnesses, the petitioners/defendants come forward with this petition without any reasons, only to delay the proceedings.



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4. Before the trial Court, no oral or documentary evidence was adduced on either side and the trial Court after hearing both sides dismissed the interlocutory application.

5. Learned counsel appearing for the petitioners would contend that the petitioners are the defendants in the suit and they already filed the Written Statements. Thereafter, the plaint was amended and again they filed their Additional Written Statement. At that time, they failed to plead about the important points in respect of questions of law and facts, which are essential in this case and thereby, they filed the interlocutory application before the trial Court to receive the Additional Written Statement under Order VIII Rule 9 and Section 151 of the Code of Civil Procedure, 1908. The trial Court observed that “The conduct of the petitioners and the nature of the suit, the delay that has occasioned, how opposite party will be put to hardship has to be decided by the trial Court and the petitioners are attempting to divert the process of the case”, thereby, the trial Court dismissed the interlocutory application. In fact, the petitioners have failed to plead about the limitation point and other aspects also and have failed to mention in the pleadings, thereby, the Additional Written



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Statement is necessary. Therefore, the order passed by the trial Court is liable to be set aside and a chance has to be given to the petitioners and the Additional Written Statement has to be received.

6. To support of his contention, the learned counsel appearing for the petitioners has relied on the following Judgments of this Court and that of the Hon'ble Apex Court:

- i. **Muthusamy Vs. Thangaraj**, 2005 (5) CTC 785.
- ii. **Thiyagarajan Vs. Manivannan**, 2007 1 LW 429.
- iii. **Baldev Singh and others Vs. Manohar Singh and another**, (2006) 6 SCC 498.

7. Heard the learned counsel for the petitioners and perused the records.

8. In this case, the petitioners/defendants have filed an interlocutory application before the trial Court for filing Additional Written Statement alleging that some of the points involving question of law and facts have been omitted. Those points have to be pleaded through the Additional Written Statement.



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9. This Court carefully perused the entire records. On perusal of the records, it is observed that already the petitioners/defendants have filed the Written Statement and then the plaint was amended. Thereafter, they have filed Additional Written Statement again the sixth respondent was included in the plaint. Thereafter, the petitioners/defendants have filed second Additional Written Statement. On the side of the respondents/plaintiffs, PW1 and PW2 were examined and the evidence of respondents/plaintiffs side was closed.

10. After closing of the respondents/plaintiffs side evidence, the suit was periodically adjourned for several times for examination of the petitioners/defendants side witnesses. The petitioners/defendants failed to adduce any evidence and thereby, the trial Court closed the evidence of the defendant side and posted the case for arguments. Thereafter, the petitioners/defendants have filed a petition to reopen the case and the same was also allowed by the trial Court. At that stage, the petitioners/defendants have filed the present petition to receive the third Additional Written Statement.



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11. The above said conduct of the petitioners/defendants shows that only to delay the proceedings, they have filed the present petition to receive the Additional Written Statement. Moreover, already one Written Statement and two Additional Written Statements were filed by the petitioners/defendants and now they want to file the third Additional Written Statement for pleading about the question of law and facts involved in this case. Since, already the petitioners/defendants have filed the Written Statement and two Additional Written Statements and the case is posted for examination of the defendants side witnesses, at this stage, they cannot be permitted to file Additional Written Statement.

12. Learned counsel appearing for the petitioners has relied the following Judgments:-

- i. **Muthusamy Vs. Thangaraj**, 2005 (5) CTC 785.
- ii. **Thiyagarajan Vs. Manivannan**, 2007 1 LW 429.
- iii. **Baldev Singh and others Vs. Manohar Singh and another**,
(2006) 6 SCC 498.



13. On a careful perusal of the said Judgments, it is clear that adding a new ground of defence or subsisting or altering a defence does not raise the same problem as adding, altering or subsisting a new cause of action, hence inconsistent defence can be raised in the Written Statement although the same may not be permissible in the case of the respondents/plaintiffs, and Courts should be very liberal in granting relief under Order VIII Rule 9 of the Code of Civil Procedure, 1908 as wide discretion has been given to the Courts to adjudicate the matter including subsequent pleadings completely and finally. In the case on hand, already one Written Statement and two Additional Written Statements filed, therefore the said case laws will not be applicable to the present facts of the case.

14. Even if any question of law involved, they can put forth the same by way of arguments before the trial Court and the same has to be decided by the trial Court in accordance with law. Therefore, there is no merits in the interlocutory application filed by the petitioners. The trial Court also after an elaborate discussion, correctly dismissed the interlocutory application. Hence, there is no perversity or infirmity in the finding recorded by the trial Court and it does not warrant any interference.



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15. In view of the above said discussion, this Court is of the opinion that this petition is of no merits and deserves to be dismissed.

16. In the result, this Civil Revision Petition is dismissed. No costs.

12.07.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes / No

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To

The District Munsif Court,
Gudiyattam.



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P.DHANABAL, J.

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