



C.R.P. (PD) Nos.3889 and 3892 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) Nos.3889 & 3892 of 2024
and C.M.P.Nos.21317 & 21320 of 2024

V.G.B.Sivaram Prasad

.. Petitioner in
both the C.R.P's.

Versus

S.Rameshbabu

.. Respondent in
both the C.R.P's.

Common Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the common order of dismissal dated 15.03.2024 passed by the VII Assistant Judge, City Civil Court, Chennai in I.A.Nos.2 and 3 of 2023 in O.S.No.1196 of 2019.

In both the C.R.P's.:

For the Petitioner : Mr.S.Mothilal for
M/s Mothilal & Goda

For the Respondent : Mr.M.Mohan Raj



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COMMON ORDER

The defendant is the Civil Revision Petitioner. O.S.No.1196 of 2019 on the file of the Court of VII Assistant Judge, City Civil Court, Chennai, is a suit for recovery of a sum of Rs.10 Lakhs as damages.

2. The cause of action for the said suit is that the Civil Revision Petitioner had presented O.S.No.1203 of 2016 for recovery of money which came to be dismissed by the learned Trial Judge on 12.12.2017. He pleads that on account of defamation caused by filing a vexatious suit, the plaintiff had suffered a loss of several lakhs, which he quantified as Rs.10 Lakhs. On service of summons, the defendant entered appearance and filed a detailed written statement. On the basis of the pleadings, the parties went for trial.

3. The plaintiff filed his proof affidavit on 14.03.2023. He marked Exs.A1 to A7 and the matter was bound over for cross examination on 11.04.2023. On 11.04.2023, the plaintiff was not present and therefore, the matter was adjourned to 03.06.2023. On 03.06.2023, also the plaintiff did not grace the witness box and the matter was adjourned to 13.06.2023. On



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13.06.2023, the plaintiff was cross examined and the evidence of P.W.1 was closed on the same day.

4. The defendant filed applications to reopen and recall the evidence of the plaintiff. These applications were numbered as I.A.Nos.2 of 2023 and 3 of 2023. The learned Trial Judge received a counter from the respondent/plaintiff and went on to dismiss the said applications. Hence, this revision.

5. Heard Mr.Mothilal and Mr.Mohan Raj and also gone through the records.

6. The narration of aforesaid facts would show that the plaintiff had presented himself for cross examination on 13.06.2023 for the first time. On all the previous occasions, viz., 11.04.2023 and 03.06.2023 the plaintiff/P.W.1 was absent. The issue seems to have arisen because, the learned counsel for the defendant had asked questions which might have been barred by principles of *resjudicata*, since the proceedings in O.S.No.1203 of 2016 had attained finality by virtue of a Judgment of this Court in S.A.No.1011 of 2021 dated



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30.11.2021.

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7. Be that as it may, when an adverse party is before the Court and presents himself for cross-examination, the Court should not interfere with the process, unless the questions asked are scandalous or amount to harassing the plaintiff. In fact, the Indian Evidence Act, under Section 146 makes it clear that questions can be asked to shake the creditworthiness of the said witness. As to how the learned counsel for the defendant would want to proceed with the evidence, is not for the plaintiff to dictate. The Court should permit the learned counsel to proceed in the manner of his preparation of cross examination. The learned Trial Judge has failed to take note of the fact that it was the plaintiff, who had not presented himself for examination on several dates. On the date when the plaintiff presented himself in the witness box, the defendant has commenced his part of trial work. Therefore, I am of the view that an opportunity should be granted to the defendant.

8. Accordingly, the Civil Revision Petitions are allowed. The order passed by the learned VII Assistant Judge, City Civil Court, Chennai, in



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I.A.Nos.2 and 3 of 2023 in O.S.No.1196 of 2019 dated 15.03.2024 is set aside.

9. Both the learned counsel agree that P.W.1 will present himself for cross examination on 28.10.2024. Mr.Mothilal agrees that on that date, he shall cross examine the plaintiff. The learned trial Judge is requested to permit the defendant to cross examine the plaintiff on 28.10.2024 and 29.10.2024.

10. Mr.Mothilal undertakes that he shall not seek any adjournment after 29.10.2024 for the purpose of cross examination of the plaintiff. In case, the witness presents himself and still the Civil Revision Petitioner does not proceed with the cross examination, the learned Trial Judge need not extend any grace to the defendant. He shall close the evidence and proceed further with the suit. No costs. Consequently, the connected miscellaneous petitions are closed.

14.10.2024

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Index : Yes / No

Internet:Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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V.LAKSHMINARAYANAN, J.,

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To
The VII Assistant Judge
City Civil Court, Chennai.

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