



WEB COPY

C.R.P.No.2151 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2151 of 2021 and
C.M.P.No.16296 of 2021

D.Elumalai

... Petitioner

Vs.

R.Elumalai

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.141 of 2021 in O.S.No.34 of 2015 dated 25.08.2021 by the Subordinate Court, Neyveli.

For Petitioner	: M/s.K.Venkateswaran
For Respondent	: Mr.P.Veeraraghavan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner/defendant seeking to file additional written statement.



2. The respondent herein filed a suit for recovery of money based on promissory note. The petitioner herein filed original written statement denying the very execution of the suit promissory note. Now, the petitioner wants to file additional written statement as if he borrowed a sum of Rs.1,50,000/- from the respondent and discharged the same by repaying it. The present application filed by the petitioner seeking reception of additional written statement was dismissed by the Court below on the ground that the averments found in the additional written statement is contrary to the averments found in the original written statement.

3. It is settled law that defendant is entitled to take inconsistent stand in his pleadings and at the time of trial, he has to elect. Therefore, the order passed by the Court below dismissing the application for reception of additional written statement is liable to be set aside.

4. The learned counsel for the respondent submitted that there is a delay of nearly 6 years in filing additional written statement and therefore, additional written statement should not be allowed.



5. It is admitted by the both the counsels that the suit was earlier decreed *exparte* and thereafter, at the instance of the petitioner/defendant, the *exparte* decree was set aside. Now, the matter was posted for commencement of trial.

6. In view of the fact that trial in this matter is not yet commenced and also by taking into consideration the delay in filing the present application, the Civil Revision Petition is allowed on condition that petitioner makes a payment of Rs.5000/- to the respondent within a period of three weeks from today. Failing which, the Civil Revision Petition shall automatically stand dismissed without further reference to the Court. On payment of the cost as directed, the Trial Court is directed to receive the additional written statement filed by the petitioner and proceed with the suit in accordance with law.

7. Having regard to the fact that the suit for recovery of money is of the year 2015, the Trial Court is directed to dispose of the same as expeditiously as possible.



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S.SOUNTHAR, J.

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8. With these observations, this Civil Revision Petitions stands allowed.

Consequently, connected miscellaneous petition is closed. No costs.

19.01.2024

Index : Yes / No

Internet : Yes / No

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To

The learned Subordinate Judge, Neyveli.

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