



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2959 of 2024

and

CMP.No.15821 of 2024

N.Sabiha Banu

... Petitioner

Vs.

Syed Shafiullah Bahmani

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the order dated 01.07.2024 passed in I.A.No.5 of 2024 in O.S.No.5968 of 2022 on the file of the learned VII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Abdul Mubeen

ORDER

This Civil Revision Petition has been filed to set aside the order dated 01.07.2024 passed in I.A.No.5 of 2024 in O.S.No.5968 of 2022 on the file of the learned VII Additional Judge, City Civil Court, Chennai.

2. The case of the petitioner is that the petitioner as a plaintiff filed the Civil



Suit in O.S.No.5968 of 2022 on the file of the VII Additional City Civil Court, Chennai, against the respondent seeking judgement and decree for recovery of money for a sum of Rs.18,00,000/- along with interest to be paid to the petitioner/plaintiff by the respondent/defendant. In the suit proceedings, on 06.03.2023, the petitioner was examined as P.W.1 and marked Ex.A1 to Ex.A6. Thereafter, the case was posted for cross examination on the side of the defendant. Neither the defendant nor his counsel was present on that date, defendant called absent and thereafter, the case was posted on 13.03.2023. Again, there was no representation for the defendant/respondent. Finally, the petitioner, on 29.08.2023, filed additional proof affidavit and after on 12.09.2023, P.W.1 cross examined, no further evidence on the side of the plaintiff and hence the petitioner / plaintiff side evidence was closed. Thereafter, the case was posted for defendant side evidence on 21.09.2023. On 29.02.2024 D.W.1 examined and Ex.B1 to Ex.B4 were marked and his evidence was continued on 07.03.2024. On 07.03.2024, DW.1 further examined and Ex.B5 was marked. At request of the petitioner / plaintiff, case was adjourned to 19.03.2024. Finally on 13.06.2024 on the request of the petitioner / plaintiff cross examination of D.W.1 was permitted on condition that the petitioner / plaintiff pay a sum of Rs.2,000/- to the respondent / defendant. On 20.06.2024, cost paid and memo also filed. D.W.1 not present, and hence, trial court had



directed to pay a sum of Rs.5,000/- to the petitioner / plaintiff and the case was adjourned to 26.06.2024. On 26.06.2024, cost of Rs.5,000/- paid to the petitioner / plaintiff and a memo also filed. D.W.1 is partly cross examined by the counsel in the afternoon by 3.15 p.m. and after detailed cross examination, request for a short accommodation and time for which the trial Court imposed the cost of Rs.5,000/- and the case was adjourned to 01.07.2024. On 01.07.2024, the petitioner not paid the cost and was also not ready to cross examine the D.W.1 and hence, further cross examination was closed and the case was posted for further examination on the side of the defendant on 05.07.2024. The petitioner had filed I.A.No.5 of 2024 seeking extension of time to pay the amount of Rs.5,000/- to the respondent / defendant on or before 15.07.2024. On 01.07.2024, the trial Court has dismissed the said I.A.No.5 of 2024 under Section 148 of CPC. Aggrieved over the same, the present petition came to be filed by the petitioner.

3. The learned counsel for the petitioner submitted that the petitioner is the plaintiff filed suit for recovery of money, it was the respondent / defendant taking time before the trial proceedings, later the petitioner was examined as P.W.1 it was the defendant who took time after several hearings, cross examination was completed and for further examination of D.W.1, respondent took time.



On 13.06.2024, the D.W.1 present and the petitioner / plaintiff sought an adjournment on 20.06.2024 and hence imposing the cost of Rs.2,000/- and the same was paid by the petitioner. On 20.06.2024 the respondent/defendant was not present and the case was posted on 26.06.2024 subject to payment of cost of Rs.5,000/- to the petitioner/plaintiff. On 26.06.2024 D.W.1 was present and cross examination commenced. The cross examination would not be completed, hence granted adjournments continuously. The Trial Court adjourned the case on 01.07.2024 imposing the cost of Rs.5,000/- and hence, I.A.No.5 of 2024 seeking extension of time for making payment filed. The trial Court dismissed the said petition under Section 148 of CPC for the reason that the petition is not with genuine reasons. Further, the learned counsel the petitioner is now ready to pay the cost and seek one more opportunity to further cross examine D.W.1. The petitioner was informed that the examination of D.W.1 was closed and hence, the petitioner filed I.A.No. 6 of 2024 seeking recall of D.W.1 for further cross examination and the same may be considered. Since it would be a consequential requirement to recall D.W.1 and thereafter only further cross of D.W.1 can be done.

4. Since it is only a limited prayer and evidence is complete only after cross



examination, notice to the respondent is not required. Hence, notice to the respondent dispensed with.

5. Since the case is under trial and the D.W.1 is also in the box, the petitioner under section 148 of CPC was dismissed on 01.07.2024 for non-payment of cost. Now, the petitioner is ready to pay the cost and to continue the cross examination.

6. Considering the submissions made and on perusal of the materials, this Court permits the petitioner / plaintiff to pay a sum of Rs.5,000/- to the D.W.1, within two weeks from the date of receipt of a copy of this order. On compliance of this order, the recall of D.W.1 is allowed and the petitioner is permitted to continue the cross examination of D.W.1 without further delay on the date fixed by the trial court.

7. With the above directions, this Civil Revision Petition is disposed of.



No costs. Consequently, connected miscellaneous petition is closed.

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25.07.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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Note: Issue order copy on 26.07.2024.

To

The VII Additional City Civil Court,
Chennai.



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M.NIRMAL KUMAR, J.

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