



C.R.P.(PD)No.3052 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3052 of 2022

and

C.M.P.No.16456 of 2022

M/s.Marathwada Auto Compo Part Pvt. Ltd.,
Represented by its Director,
Mr.Ajit Gopalrao Soundalgikar,
having its registered office at
E-63, MIDC Area, Waluj,
Aurangabad – 431 136

.. Petitioner

Vs.

M/s.Same Deutz Fahr India P Ltd.,
Represented by its Authorized Signatory,
Mr.S.Tamilselvan, JGM – Finance,
having its registered office at
72 & 72M, SIPCOT Industrial Complex,
Ranipet – 632 403, Vellore District.

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the decreetal order dated 04.08.2022 passed in I.A.No.4 of 2022 in O.S.No.41 of 2016 by the learned II Additional District Judge, Vellore at Ranipet.

For Petitioner : Mr.Neelakandan
for M/s.T.Poornam

For Respondent : Ms.Sandya Rangarajan
for M/s.Surana & Surana



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ORDER

This Civil Revision Petition arises against an order passed in I.A.No.4 of 2022 in O.S.No.41 of 2016 on the file of the learned II Additional District Judge, Vellore at Ranipet.

2. O.S.No.41 of 2016 is a suit which has been filed for recovery of money on the ground of latent defects in the drawbars supplied by the petitioner/defendant to the respondent/plaintiff.

3. The defendant is from Aurangabad which is in the state of Maharashtra. A detailed written statement had been filed and the matter stood posted for examination of the defendant. The defendant filed I.A.No.4 of 2022 seeking permission of the Court to file an additional proof affidavit and to tender evidence on that basis.

4. It transpires that this application was opposed by the respondent/plaintiff on the ground that the same was in English, whereas, the language of the Court is Tamil and therefore, the proof affidavit should



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also be filed only in the Tamil language. This objection seems to have been accepted by the learned Trial Judge who held that Order XVIII Rule 9 of the Code of Civil Procedure does not apply if an application filed under the said provision is objected to by the opposing party. While dismissing the application, he held that for the sake of convenience of the defendant, the questions in the cross-examination would be put to the defendant in English and the recording will be made in Tamil following the translation methodology. Aggrieved by the same, the present revision has been presented before this Court.

5. Heard Mr.Neelakandan appearing for the petitioner and Ms.Sandhya Rangarasu appearing for the respondent.

6. Mr.Neelakandan would submit that the petitioner is totally ignorant of the Tamil language and can depose only in English. If the cross-examination takes place in Tamil, he would not be in a position to respond to the same. Apart from that, he would state that the suit being one for damages, where questions on intricate details of the design, etc., will be put to the witness, it is only reasonable that the cross-examination be conducted



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in the English language. At the time of translation, the essence of the deposition would be missed, and therefore, the evidence of the petitioner should be taken down by the learned Trial Judge in English.

7. Ms.Sandhya Rangarasu referring to the Order XVIII Rule 9 of the Code of Civil Procedure would submit that as per Order XVIII Rule 9 (1) of the Code of Civil Procedure, the evidence can be taken in English only if it is not objected to by the opposing pleader. Since there has been an opposition in this case, the law contained in Order XVIII Rule 9 of the Code of Civil Procedure would be inapplicable, and hence, the order passed by the learned Trial Judge deserves to be upheld.

8. I have carefully considered the submissions on either side.

9. This revision not only requires the interpretation of Order XVIII Rule 9 of the Code of Civil Procedure, but also requires prudent scrutiny of the evolution of the Tamil Nadu Official Language Act, 1956 [hereinafter the “Act” for the sake of brevity] to understand the mandate placed on the courts subordinate to the High Court of Madras to record evidence in the



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Tamil language. Therefore, the same will be discussed hereinafter.

WEB COPY Position of law before the advent of the Tamil Nadu Official

Language (Amendment) Act, 1976

10. It is to be noted that Section 4-A of the Act mandates the courts subordinate to the High Court to record evidence in the “Tamil” language. The said provision was inserted in the Act by the Tamil Nadu Official Language (Amendment) Act, 1976 [hereinafter the “Amendment Act, 1976” for the sake of brevity]. Before discussing the scope of the Amendment Act, 1976, it is pertinent to understand the scheme of the Act prior to the introduction of the said amendment.

11. The Act came into force on 23rd January 1957 to make “Tamil” the language to be used for the official purposes of the State. Section 2 declares Tamil as the official language of the State. Section 3 permits the continuance of the use of the English language for official purposes until the State Government otherwise directs. Section 4 reiterates the power of the State Government to notify the “official purposes” for which Tamil is to be used.



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12. As it can be seen from the scheme laid out herein before, the original Act did not contain any provisions that specifically stipulated the use of the Tamil language in the court proceedings. Till 1970, the courts in the State of Tamil Nadu were permitted to record evidence of the litigants in the English language. This position of law changed when the Government issued G.O.Ms. No. 5630 of 1969, Public Department, dated 13.11.1969, in exercising its power under Section 4 of the Act. The said notification adopted “Tamil” as the official language to be used by the Presiding Officers of all the courts subordinate to the High Court for the purpose of recording evidence from 14.1.1970. The law laid down through the notification was further strengthened when the Amendment Act, 1976 was introduced.

Position of law after the advent of the Amendment Act, 1976

13. The Amendment Act, 1976 was issued by the President of India, acting in accordance with the powers conferred upon him under the Tamil Nadu State Legislature (Delegation of Powers) Act, 1976, when the State of Tamil Nadu was placed under the President’s Rule. This Amendment Act,



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1976 was approved by both Houses of Parliament on 20.06.1977 and 22.06.1977 respectively. Subsequently, when the Proclamation under Article 356(1) of the Constitution was withdrawn and when the State Legislature was allowed to function, the Amendment Act, 1976 was not repealed or modified by the Tamil Nadu State Legislature. Therefore, the provisions contained in the Amendment Act, 1976 became the law of the land.

14. The Amendment Act, 1976 came into force on 12.11.1976. It modified the original Act by introducing two sections, namely Section 4-A and Section 4-B. Section 4-A mandates all the courts, be it civil or criminal, subordinate to the High Court to record evidence in the Tamil language. Section 4-B mandates all the courts, be it civil or criminal, subordinate to the High Court to write judgments and decrees in the Tamil language. Since, the present matter only deals with the recording of evidence in the Tamil language, it would suffice to deal with the position of law laid down under Section 4-A of the Act. For the sake of cogent discussion, it is only proper that Section 4-A is reproduced hereinafter :



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“4-A. Declaration of Tamil as the language of Courts for recording evidence in all proceedings. — Notwithstanding anything contained in Sections 2, 3 & 4 of this Act or in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) or in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), Tamil shall be the language of all—

(i) Civil and Criminal Courts subordinate to the High Court;

(ii) Tribunals; and

(iii) Rent Courts and revenue Courts;

for the purpose of recording evidence in all proceedings:

Provided that the Presiding Officer of any such Court or Tribunal may, in recording evidence in Tamil, employ English words and phrases, wherever, he feels necessary to bring out the exact purport and meaning:

Provided further that the High Court may, by general or special order, permit—

(i) any class of Presiding Officers of Civil or Criminal Courts, or Tribunals, or

(ii) any Presiding Officer of any such Court or Tribunal to record evidence in English in such circumstances and for such period as may be specified in such order:

Provided also that the Board of Revenue may, by general or special order, permit—

(i) any class of Presiding Officers of Rent Courts or Revenue Courts, or

(ii) any Presiding Officer of any such Court,



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to record evidence in English in such circumstances and for such period as may be specified in such order.

Explanation.— In this Section and in Section 4-B, “Rent Court” or “Revenue Court” shall mean any Court presided over by an officer of the Revenue Department.”

15. As stated above, Section 4-A casts an obligation on all the courts subordinate to the High Court to record evidence in Tamil. In order to correctly assess the object, nature, and scope of Section 4-A, it is necessary that I refer to the judgment of this Court in the case of ***M. Ranka v. State of Tamil Nadu [(1994) 2 Mad LJ 281]***

The object and scope of Section 4-A of the Act

16. In the *Ranka* case cited supra, while upholding the constitutional validity of Section 4-B of the Act, a Full Bench of this Court expounded the object and scope of the Amendment Act, 1976 in the following words:

“37. ...The Act is passed with the object of benefiting the litigants in Tamil Nadu. Most of them are agricultural peasants and they do not know English. In (1936-37) 41 CWN 177 (J.S.) it is said:—



‘Those who are concerned with the administration of justice in India have often felt disturbed by the unreality of much of the recorded evidence on which cases are decided. The Court language of this country is English, but the proportion of litigants and witnesses who know the language at all is infinitesimal. Even among lawyers many can be found whose knowledge of English is of less than striking. The judge again is often an Englishman who, in spite of his prizes for proficiency in the vernacular, possesses no more than a smattering of the language in which the case is unravelled before him. Even when the Judge is an Indian, he suffers from the converse difficulty of rendering into faithful English the vigorous and often picturesque idiom of the native speech, particularly when it is of the colloquial variety. The result of these many-sided deficiencies in the instruments of transmission inevitably is that the matter transmitted into pages of the record suffers considerable mutilation in the process and what is recorded is far removed from what is actually said’

38. It is only to remove the above defect, the impugned enactment was passed. The interest of the litigants who knock the doors of the Courts seeking justice is far more important than that of the lawyer”.

17. A mere reading of the extracted portion would show that the Amendment Act, 1976 was only introduced to make the court proceedings more litigant-friendly and to protect the essence of the evidence transmitted



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by the litigants at the time of chief and cross-examination. Further, the proviso attached to Section 4-A empowers the High Court of Madras to permit certain Presiding Officers of the subordinate courts to record evidence in the English language under certain circumstances for a specific period of time. A combined reading of the extracted portion and the proviso would show that Section 4-A was never intended to be a provision of rigid application. The very reason for the introduction of Section 4-A was only to promote the welfare of the litigants by making sure that the essence of their evidence is not lost. It was never intended to serve as an instrument reinforcing a particular language, but only as a tool to further the ends of justice by making the court proceedings more comprehensible to the litigants.

18. It is not disputed that a Division Bench of this Court in the case of ***Solai Subramanian v. State of Tamil Nadu [2014 (4) CTC 821]***, set aside the Official Memorandum dated 5.01.1994 issued by the Registrar General of the Madras High Court under the Second Proviso to Section 4-B (1). The said Official Memorandum, without spelling out the conditions as required under the Second Proviso, generally permitted all the Judicial Officers of the subordinate courts to write judgments, orders, awards, and decrees in



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English. When the *Solai Subramanian* decision is read as a whole, it would suggest that the Official Memorandum was only struck down presupposing the competency of the Judicial Officers to record evidence in Tamil and not upon the presumption that all the suiting parties would have satisfactory knowledge of the Tamil language. In fact, the Division Bench itself quoted the *Ranka* judgment to opine that:

“25. ... Courts function primarily for the benefit of the inhabitants of the locality and that therefore, the proceedings must be conducted in a language understood by them”.

19. Therefore, Section 4-A strives to further the cause of the litigants by enhancing the clarity of the court proceedings and making them more comprehensible. With the advent of globalization, the interactions of people around the country, for business or otherwise, have tremendously increased. People living in different parts of India are forced to litigate in forums that are not necessarily situated within their locality. In such a backdrop, restricting the scope of Section 4-A by making the law contained therein mandatory even with regard to the non-Tamil-speaking litigants would be against the interests of justice.

Order XVIII Rule 9 of the Code of Civil Procedure



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20. It is also pertinent to note that the Civil Procedure Code is not completely silent on the issue before this Court. Order XVIII Rule 9 of the Code permits the courts, whose language is not English, to record the evidence in the English language if the parties before the court are in agreement with the same.

21. The Parliament, by enacting the Code of Civil Procedure (Amendment) Act, 1976, modified the earlier Order XVIII Rule 9 to its present position. The modified provision has been in force since **01.02.1977**. The present Order XVIII Rule 9 is reproduced below:

*“ 9. When evidence may be taken in English.
—(1) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the judge may so take it down or cause it to be taken down.*

(2) Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English”



22. The reason for making such modification was stated in the “Objects and Reasons” of the Bill preceeding the Code of Civil Procedure (Amendment) Act, 1976. The relevant portion of the same is extracted hereinafter :

“The Bill provides for the recording of evidence in English if such evidence is given in English. The Committee notes that there is no provision in the Court to the effect that where evidence is given in any other language, it may be recorded in English. The committee feels that since different languages are spoken in different parts of the country and in view of the rapid expansion of the means of communication there is a possibility that a man from the North may be sued in a Court in the South and vice versa, a provision might be made in the Code to the effect that if both parties agree, evidence may be taken down in English even though the evidence is given in any language other than English. Sub- Rule (2) in R.9 of O.XVIII has been inserted accordingly”

23. From the extracted portion, it is clear that Order XVIII Rule 9 was modified to protect the interests of those litigants who are made to conduct or contest proceedings in localities where their native language is not the language of the court. In such situations, the courts will be permitted to record the evidence of such parties in the English language. If Order XVIII



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Rule 9 is strictly interpreted so as to deny the right under the said provision when an objection is made by the other party to the proceeding, the very object of the provision is lost. Therefore, Order XVIII Rule 9 can be resorted to by the courts when the observance of the mandate laid down under Section 4-A of the Act would do more injustice to the parties involved in the litigation.

**Harmonious construction of Section 4-A of the Act and Order XVIII
Rule 9 of the Code**

24. I cannot proceed without mentioning that it was the Parliament that enacted both the Tamil Nadu Official Language (Amendment) Act, 1976 as well as the Code of Civil Procedure (Amendment) Act, 1976. Though the amended Order XVIII Rule 9 was brought into effect after the Tamil Nadu Official Language (Amendment) Act, 1976 came into force, both the *Ranka* judgment (1994) and the *Solai Subramanian* judgment (2014) are conspicuously silent on the same. Therefore, I must analyze the effect of Order XVIII Rule 9 of the Code on Section 4-A of the Act.



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25. The guiding principle on interpretation of statutes states that if two laws, enacted by the same legislature and dealing with the same subject matter, apparently contradict each other, an effort must be made to harmoniously construe the provisions. In the present case, Section 4-A of the Act mandates the subordinate courts to record evidence in the Tamil language, whereas Order XVIII Rule 9 of the Code allows the courts to record evidence in the English language. Even though the provisions give an apparently contradictory mandate, a proper understanding of the said provisions would show that they are not conflicting provisions of law incapable of reconciliation.

26. As discussed by me in the previous paragraphs, Section 4-A of the Act and Order XVIII Rule 9 of the Code are not provisions that require strict interpretation and application. Both the provisions have been inserted in the respective enactments to further the interest of the litigants and to protect the essence of the evidence let in by them. Further, the Court has to always assume that the Parliament had carefully considered and evaluated the contents and implications of both the amendments before passing the same. That being the case, it is only fair to offer an interpretation that would



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enable both provisions to function in their respective spheres as they were intended to be.

27. When the Parliament enacts a statute, it is almost impractical to expect the Legislature of this country to foresee all the contingencies that may arise under the said piece of legislation. When such a contingency, not seemingly contemplated under the statute, arises, the Courts are duty-bound to offer an interpretation that would align with the object of the enactment. In this regard, it is also suitable to reproduce the observation of the Supreme Court in the case of *Vijay Madanal Choudary v. Union of India* [2022 SCC Online SC 929] :

“274. We may profitably advert to the judgment in Seaford Court Estates Ltd., which states:

‘The question for decision in this case is whether we are at liberty to extend the ordinary meaning of “burden” so as to include a contingent burden of the kind I have described. Now this court has already held that this sub-section is to be liberally construed so as to give effect to the governing principles embodied in the legislation (Winchester Court Ltd. v. Miller); and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts.



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which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give “force and life” to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his second volume Eyston v. Studd. Put into homely metaphor it is this : A judge should ask himself the question : If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would



have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases''.

28. With the explosion of commercial litigation, if I were to accept the argument of Ms. Sandhya Rangarasu that all the evidence, irrespective of the language of deposition, must be recorded in Tamil. This, no doubt, will put the non-Tamil-speaking litigants in absolute quandary. Further, on such acceptance, I will be placing the foundation stone for the construction of the Tower of Babel in the judicial space of Tamil Nadu. Therefore, it is only reasonable that I balance the competing interests of the Tamil-speaking natives and the non-Tamil-speaking population.

29. The crux of litigation is that the parties depose and file documents and such evidence is marshaled by the Court for rendering a just judgment. When the entire idea behind both the amendments was for the benefit of the litigants, I have to only interpret both the provisions, namely Section 4-A of the Act and Order XVIII Rule 9 of the Code, in such a way that they can peacefully co-exist in the *corpus juris* of the country. Here, I have to reiterate that the Courts are for the litigants and litigants are not for the Courts.



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30. Therefore, Section 4-A would have application vis-à-vis the native Tamil-speaking litigants of Tamil Nadu, and Order XVIII Rule 9 would have application vis-à-vis the non-Tamil-speaking litigants who do not have working proficiency in the Tamil language.

Translation of the deposition by the Trial Courts

31. It is also worth pointing out that it has become a practice of the Trial Courts in the State of Tamil Nadu to record evidence in the Tamil language. When a witness who does not know Tamil deposes in a language known to him, there is the use of a translator to record the evidence in the Tamil language. In fact, some Presiding Officers ask the translator to step into the witness box to testify that the translation made by him/her is true to the best of his/her knowledge and ability. In such cases, it is only the translated evidence that drives the case of the parties.

32. Now, this is a concerning situation as pointed out in *Ranka's* case (See, Para 16 supra). When the whole outcome of the case is dependent on the evidence let in by the parties, it is only reasonable to expect the parties to depose the most accurate information available to the best of their knowl-



edge. In the case of translation, the essence of the information deposed by the witness could be lost and the witness is forced to bear the brunt of an inaccurate deposition for no fault of his.

33. Apart from that, once the evidence is recorded, the Court normally reads over the deposition to the party to confirm whether what has been recorded by the Court is the statement made by him in the witness box. If the witness does not know the Tamil language, he will not be in a position to ensure that his deposition will prove his case. This situation was also taken note by the Supreme Court in the case of ***Naim Ahamed v. State (NCT of Delhi)*** [2023 SCC Online SC 89], wherein the Court observed that:

“25. The evidence of the witness has to be recorded in the language of the court or in the language of the witness as may be practicable and then get it translated in the language of the court for forming part of the record. However, recording of evidence of the witness in the translated form in English language only, though the witness gives evidence in the language of the court, or in his/her own vernacular language, is not permissible. As such, the text and tenor of the evidence and the demeanor of a witness in the court could be appreciated in the best manner only when the evidence is recorded in the language of the witness. Even otherwise, when a question arises as to



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what exactly the witness had stated in his/her evidence, it is the original deposition of the witness which has to be taken into account and not the translated memorandum in English prepared by the Presiding Judge. It is therefore directed that all courts while recording the evidence of the witnesses, shall duly comply with the provisions of Section 277 of Cr. P.C.”.

34. Though the *Naim Ahamed* judgment relates to the recording of evidence under Section 277 of the Cr.P.C., it will have a bearing on the present case, for the principles of recording the evidence are one and the same in the civil and criminal cases. Therefore, the evidence of the native Tamil-speaking-litigants must be recorded in the Tamil language and the evidence of the non-Tamil-speaking parties must be recorded in the English language.

Consent of the Opposing party

35. In this regard, I should also necessarily deal with the issue of consent of the opposing party as contemplated under order XVIII Rule 9. A bare interpretation of this section can be given by holding that the consent of the opposing party would be necessary if the entire evidence in the suit is to be taken down in English. If the evidence of only one witness is to be



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given, following the *Naim Ahamed* judgment of the Supreme Court cited supra, the court can record evidence in English and may place the translation of such evidence on record if they so desire. This alone will ensure the preservation of the essence of the evidence. Therefore, in the case of non-Tamil-speaking litigants, the Courts must record their deposition in the English language and may place a translation of the deposition on record in the interest of the opposing party.

36. In the present case, the defendant is from Maharashtra and I do not expect a person, who is residing in Maharashtra to have a working knowledge of Tamil. Even if he were to have a working knowledge of Tamil, since the suit relates to damages on the basis of the allegations of deficiency in the design, it would not be possible for the defendant to give evidence in Tamil in a matter which requires higher degree of knowledge of Tamil than the ordinary *lingua franca*.

37. If the deposition of the defendant is translated into Tamil and the translated deposition is read out to the witness, by no stretch of imagination can a person, who knows maybe English and Marathi, understand what has



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been recorded in Tamil. The Code of Civil Procedure is not a procrustean bed to knock off the excess height in order to fit the witness to itself. It is a code of fairness and the purpose for which it is applied to this litigative world is to enable a witness to be placed as nearly as possible on the same footing as his opposing side. Therefore, it is only reasonable that the petitioner herein be permitted to depose in the English language.

Decision

38. Therefore, in the light of the above discussion, I set aside the order of the learned Judge in I.A.No.4 of 2022 in O.S.NO.41 of 2016 dated 04.08.2022 and direct that the proof affidavit filed by the defendant be received in English, the deposition be recorded in English, the cross examination also to be recorded in English. Thereafter, it shall be read over to the witness in English to be confirmed and then only, his signature be taken as the true statement of his evidence before the Court. Further, in compliance with the provisions of the Tamil Nadu Official Language Act, 1956, the Learned Trial Judge may order the translation of the deposition in Tamil and place it on record in the interest of the opposing party.



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39. This direction is given because the defendant is not from this part of the country and it is given to put him at ease during the time of examination. So that, the Court is able to cull out the truth of the case. In case, the translation method is followed by the Court as pointed above, there is a risk that the crucial evidence might not be captured as required for proving the case.

40. With the aforesaid directions, this Civil Revision Petition stands allowed. The order passed in I.A.No.4 of 2022 in O.S.No.41 of 2016 on the file of the learned II Additional District Judge, Vellur at Ranipet is set aside. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The II Additional District Judge,
Vellore at Ranipet

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and

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