



WEB COPY



C.R.P. Nos. 3518 and 3519 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. Nos. 3518 and 3519 of 2024
and
C.M.P. Nos. 19075 and 19078 of 2024

In both C.R.Ps.

1. Ponnuvel

2. P.Vijayanand

... Petitioner / Petitioner / Defendants

Vs.

S.Kuppusamy

... Respondent / Respondent / Plaintiff

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the decree and judgment dated 18.06.2024 passed in I.A. Nos. 2 and 3 of 2024 in O.S. No. 392 of 2021 on the file of the Principal District Judge, Salem.

For Petitioners : Mr. L.Ramanathan
(in both C.R.Ps.)

For Respondent : Mr. J.P.Rajesh
(in both C.R.Ps.)



C.R.P. Nos. 3518 and 3519 of 2024

COMMON ORDER

WEB COPY

These civil revision petitions arise at the instance of the defendants.

2. O.S. No. 392 of 2021 has been presented for recovery of a sum of Rs.10,00,000/- together with interest at the rate of 18% per annum. The case of the plaintiff is that on 01.02.2019, the plaintiff and the defendants entered into a sale agreement. On the very same day, a sum of Rs. 25,00,000/- had been paid. Subsequently, the said agreement was cancelled on 27.07.2020. Out of Rs. 25,00,000/- received as advance, a sum of Rs.15,00,000/- was repaid leaving a balance of Rs.10,00,000/-.

3. Despite the demand of the plaintiff, since the defendants did not pay the amount, he came forth with the suit. The defendants filed a written statement stating that no transaction took place between the plaintiff and the defendants. According to them, there was one R.Duraisamy who was operating behind the screen and who was the employer of the plaintiff. They plead that they had borrowed Rs.15,00,000/- from R.Duraisamy and had executed a sale agreement in favour of his employee by name N.Santhakumar on 06.04.2016. Subsequently, on the instruction of R.Duraisamy, the agreement dated 06.04.2016 was cancelled and another agreement was entered



C.R.P. Nos. 3518 and 3519 of 2024

into with the plaintiff on 01.02.2019. They deny that they received any payment from the plaintiff. On this plea and other pleas, the defendants denied their liability and sought for dismissal of the suit.

4. The parties went for trial. The plaintiff examined himself as PW1 and another witness as PW2. Subsequently, the 1st defendant examined himself as DW1 and his cross examination too was over. When the matter was listed for further evidence on the side of the defendant, he took out applications to reopen and recall in I.A. Nos. 2 and 3 of 2024. After a receipt of a counter from the plaintiff, the learned Principal District Judge proceeded to dismiss the application on 18.06.2024. Hence, this revision.

5. Heard Mr. L.Ramanathan for the civil revision petitioner and Mr. J.P.Rajesh for the respondent.

6. Mr. L.Ramanathan would submit that there are certain crucial questions regarding the transaction that have been entered into between the plaintiff and the defendants that he would want to pose to the plaintiff. He states that at the time of original cross examination, the plaintiff was not confronted with the same.



C.R.P. Nos. 3518 and 3519 of 2024

WEB COPY 7. Mr. J.P.Rajesh would take me through the several dates in the cross examination of the plaintiff and would state that the evidence which commenced on 12.10.2022 was completed only on 26.04.2023. For a period of nearly 6 months, PW1 was the witness box and only thereafter PW2 was examined. He pleads the entire idea of the defendant is only to drag on the matter and deny the plaintiff of his rightful due.

8. I have carefully considered the argument of both sides.

9. The plea of the plaintiff is that he had advanced the money to the defendants under the sale agreement dated 01.02.2019. Per contra, the defendants would plead that the agreement itself is a make-believe, entered into at the instance of one Duraisamy, a financier.

10. The defendants plead that at no point of time there were any cash transactions between the plaintiff and the defendants. That being the plea, which had been raised at the earliest point of time (even at the time of exchange of suit notices), I feel if another opportunity is given to the defendants to cross examine the plaintiff, it would serve the ends of justice.



C.R.P. Nos. 3518 and 3519 of 2024

However, I have to take into consideration the plea of Mr. J.P.Rajesh that the defendants at all points of time seems to have been prolonging the trial. It is of course in the defendants' interest to prolong the trial when it is a suit for recovery of money. Lest the defendant plead that he was not given an opportunity and attempt to move a similar application before the Appellate Court under Order XLI Rule 27 of the Code, I feel if an opportunity is given right now, that plea would be foreclosed. However, the plaintiff and the defendants cannot have a free ride. Since they want the luxury of cross examination of the plaintiff, they would necessarily have to pay for the said luxury.

11. In the light of the above discussion, these civil revision petitions are allowed on the following terms:-

(i) The defendants shall pay to the plaintiff a sum of Rs.20,000/- on or before 21.10.2024. If the cost is paid and only then, the plaintiff shall present himself in Court on the next date of hearing, which both sides agree is on 22.10.2024. On that day, the plaintiff's cross examination should be completed by the defendants.

(ii) In case they do not pay the cost or seek for an adjournment, the learned District Judge is requested to close the evidence and reserve the matter



C.R.P. Nos. 3518 and 3519 of 2024

for judgment.

WEB COPY (iii) Being a suit for recovery of money, the learned Judge is requested to dispose of the suit itself by 30.11.2024.

No costs. Consequently, the connected miscellaneous petitions are closed.

03.10.2024

Index : Yes / No

Speaking order : Yes / No

NCC : Yes / No

pal

To

The Principal District Judge, Salem.



WEB COPY



C.R.P. Nos. 3518 and 3519 of 2024

V.LAKSHMINARAYANAN, J.,

pal

C.R.P. Nos. 3518 and 3519 of 2024

03.10.2024