



C.R.P. (PD) .No. 4284 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2024

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THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 4284 of 2024

&

C.M.P.No. 23821 of 2024

N.R.Loganathan

...Petitioner

Vs.

N.M.Kousalya

...Respondent

Prayer: Petition is filed under Article 227 of the Constitution of India to set aside the order dated 06.09.2024 passed by the learned XIX Additional Judge, City Court, Chennai, in I.A.No.2 of 2024 in O.S.No.1140 of 2023, dismissing the petition to reopen P.W.1 Cross examination by the petitioner / 1st defendant, which was closed by the Trial Court on 07.08.2024.

For Petitioner : Mr. M.Kempraj

For Respondent : Mr. M.Mohamed Hasain



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ORDER

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This Civil Revision Petition arises against the order passed by the learned XIX Additional City Civil Judge, Chennai, in I.A.No.2 of 2024 in O.S.No.1140 of 2023.

2. O.S.No.1140 of 2023 is a suit for recovery of money on the foot of promissory notes. The claim of the plaintiff is that the 1st defendant had executed four promissory notes on 05.03.2020 and two promissory notes on 10.05.2020, in favour of one Muthu Krishna Reddy, who is the husband of the plaintiff. The promissory notes are to the tune of Rs.30,00,000/-. The said Muthu Krishna Reddy passed away and therefore the plaintiff as a legal representative of the said Muthu Krishna Reddy presented a plaint. For the sake of completion, she had impleaded her children as defendants 2 to 5.



3. Summons was served on the 1st defendant and he has also filed a detailed written statement.

4. On the basis of respective pleadings, the parties went for Trial. P.W.1 filed her proof affidavit on 29.09.2023. Thereafter, several opportunities were given to the 1st defendant to cross examine her. The 1st defendant also cross examined her on 19.10.2023, 06.11.2023, 21.11.2023, 19.12.2023, 22.01.2024 and 19.02.2024. Further, the 1st defendant continued cross examination on 08.04.2024 to 21.06.2024. Finally, the matter was posted on 25.07.2024. On that date, the 1st defendant was not ready to cross examine the plaintiff and hence a cost of Rs.1,500/- was imposed for adjourning the matter to 07.08.2024.

5. Unfortunately, when the matter was listed on 07.08.2024, the learned counsel for the 1st defendant, who was to cross examine P.W.1 had suffered an accident and therefore was not present. Furthermore, the cost of Rs.1500/- was also not paid. Hence, the Court was left with no other option than to close P.W.1 evidence.



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6. At that stage, the petitioner came forward with an application to reopen the evidence of P.W.1 which had been closed on 07.08.2024. The reason given in the affidavit is that the learned counsel had suffered an accident and had to undergo surgery. Hence, he was not in a position to continue the cross examination.

7. The plaintiff filed a detailed counter to the said application, pointing out several dates on which proceedings had been adjourned and also pointed out that while non appearance of the learned counsel who was cross examining might be valid, no reason had been given for non payment of Rs.1500/-.

8. The learned Trial Judge persuaded with the submissions and dismissed the application to reopen. Hence, this revision.



9. I heard Mr.M.Kempuraj for the civil revision petitioner and Mr.M.Mohamed Hasain for the respondent.

10. The narration of the above facts shows that the matter was listed on 07.08.2024 for continuation of cross examination. The learned counsel, who was cross examining the plaintiff on behalf of the 1st defendant, had unfortunately suffered an accident and had to undergo an operation. Hence, he could not present himself to the Court for the purpose of continuing the cross examination which has been going on for more than 11 months.

11. As rightly pointed out by Mr. M.Mohamed Hasain, no reason has been given for the non-payment of cost of Rs.1500/-. However, the Court always has the power to extend the time granted for complying with any condition that might be imposed on the party in terms of Section 148 read with Section 151 of CPC. Therefore, emphasis need not be placed on non payment of costs.



12. Mr.Kemprij pleads that he is now healthy and in a position to cross examine P.W.1. He pleads, if a day's opportunity is granted to him, he will be in a position to complete the cross examination of his side.

13. This being the situation, I am inclined to give an opportunity in the interest of justice for the 1st defendant. This is because, the demand runs into several lakhs and at a later date, the 1st defendant should not plead that he was not given sufficient opportunity for completing his cross examination.

14. In the light of the above, this Civil Revision Petition is allowed with the following directions:

(i)The 1st defendant / civil revision petitioner shall pay a sum of Rs.10,000/- as cost in addition to Rs.1500/-, that had already been imposed by the Trial Court, to the plaintiff.



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(ii)The said sum shall be paid on or before 04.11.2024.

(iii)The learned Trial Judge, after confirming that the cost has been paid, shall grant an opportunity to the 1st defendant to cross examine the plaintiff on 05.11.2024. Mr.Kempiraj, as agreed, shall conclude his part of cross examination on that day itself, i.e., 05.11.2024. Mr.M.Mohamed Hasain assures that the plaintiff will be present on that day.

(iv)The 1st defendant shall file his proof affidavit on or before 12.11.2024. The plaintiff will be entitled to cross examine the 1st defendant from 12.11.2024 to 06.12.2024.

(v)After hearing the arguments, the learned Trial



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*Judge is requested to pronounce Judgment in the suit on
or before 20.12.2024.*

***(vi)In case of non payment of cost, the Civil
Revision Petition will automatically stand dismissed,
without any further notice to this Court.***

15. With the above directions, the Civil Revision Petition is
allowed. Consequently, the connected miscellaneous petition is closed.

No costs.

24.10.2024

Index : Yes/No
Internet : Yes/No
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The XIX Additional Judge,
City Civil Court,
Chennai.

V.LAKSHMINARAYANAN, J.



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