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C.R.P. No.3634 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.3634 of 2022
and C.M.P. No.19244 of 2022

N. Rajesh Kanna S/o. Nagarajan ... Petitioner / Petitioner / 3rd Defendant

Vs.

G.N. Rajan Babu Respondent / Respondent / Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.07.2022 made in I.A. No.1 of 2022 in O.S. No.18 of 2006 pending on the file of the I Additional District and Sessions Judge, Vellore District.

For Petitioner : Mr. P.C. Harikumar

For Respondent : Mr.Avinash Modhwani for
Mrs. V. Srimathi.

ORDER

The Civil Revision Petition is filed challenging the order passed in I.A. No.1 of 2022 in O.S. No.18 of 2006 on the file of the I Additional District and Sessions Court, Vellore, wherein the petitioner herein has filed a petition before the Trial Court under Order VIII Rule 9 of Code of Civil Procedure to permit him to file additional written statement and the same was dismissed by the Trial Court. Against the said dismissal order, the present Civil Revision



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Petition has been preferred by the petitioner.

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2. According to the petitioner, he is the 3rd defendant in the main Suit and the respondent has filed the main Suit for the relief of partition and for permanent injunction. After receipt of summons, he appeared through his counsel and also filed written statement. Since he is not having wide knowledge about the Court proceedings, he was not in a position to instruct the counsel to file written statement with vital points. Now only he is able to gather about the status of the suit schedule mentioned properties. Therefore, an additional written statement with vital points has to be filed to that effect. Hence, he filed the petition to permit him to file additional written statement, but the same was dismissed by the Trial Court.

3. According to the respondent, the petition is not maintainable. The petitioner along with other defendants colluding with each other, in order to delay the proceedings, filed this application after a delay. There is no acceptable reasons mentioned in the affidavit for the non-filing of the additional written statement from the year 2004 till the date of filing of the present application. The petitioner remained silent spectator all these years from 2004 and after filing the proof affidavit with documents, the present application has been filed with an intention to delay the proceedings. Now



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after filing proof affidavit of PW1, the present application is filed at belated stage and the same is not valid. The petitioner / 3rd defendant has to plead all the defences in his written statement, when he was provided sufficient time and should have raised all defences available to him, if failed to plead as per the Doctrine of waiver, the petitioner cannot raise later. During the pendency of Suit, the 3rd defendant created documents in respect of Suit schedule property which is hit by *doctrine of lis pendens* and the alleged transactions are between the defendants in the Suit and thereby, the present application is not maintainable and is liable to be dismissed.

4. Before Trial Court, no oral or documentary evidence adduced on either side. The Trial Court, after hearing both sides, dismissed the petition. Against the said dismissal order, the present civil revision petition has been preferred by the petitioner.

5. The learned counsel appearing for the petitioner would contend that he is the 3rd defendant in the main suit and the respondent has filed the main Suit for relief of partition and permanent injunction. Already the petitioner has filed written statement and at that time, he was unable to instruct his counsel in respect of vital points. Now only, he came to know about the omission of such vital points. As such, those vital points are to be pleaded by



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way of filing additional written statement. Thereby, he filed the petition before the Trial Court and the same was dismissed. The Trial Court failed to consider that during the pendency of the Suit, there were some transactions happened between the parties and in order to elicit the same, the additional written statement is essential. Therefore, the order passed by the Trial Court is liable to be set aside by allowing this civil revision petition.

6. The learned counsel appearing for the respondent would contend that already the petitioner / 3rd defendant adopted the written statement filed by other defendants and the Suit filed in the year 2004 and now after filing proof affidavit of PW1, when the matter is posted for marking documents, the present petition is filed after a long time. Even according to the petitioner, there were some transactions happened during the pendency of the Suit and the same is hit by *lispendens*. Therefore, the additional written statement is no way relevant to this case and only to delay the proceedings, the petitioner has filed this petition belatedly. The Trial Court also after referring judgment relied on by both the parties, correctly dismissed the petition and the same is in order and the present Civil revision petition is liable to be dismissed.

7. This Court heard both sides and perused all the materials available on record.

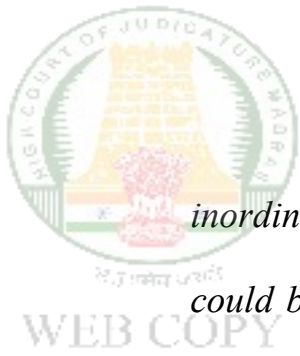
8. In this case, it is an admitted fact that the petitioner, being the 3rd



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defendant, filed written statement and the case is pending from 2004 and after 18 years, the present petition is filed. Even according to the additional written statement, some of the transactions have been made during the pendency of Suit and those transactions have to be brought to the knowledge of this Court by way of additional written statement. Since those transactions were taken place, during the pendency of the Suit, those transactions are hit by *doctrine of lispendens* and thereby, separate additional written statement is not necessary and the petitioner has not stated any valid reasons for the delay of 18 years, that too after the case is posted for examination of PW1 and marking of documents. The transactions are not between the third parties and the transactions were taken place between the defendants and very well know about the pendency of the case and therefore, those transactions are hit by *lispendens*.

9. The Trial Court, in its order, held that "*in the affidavit, the 3rd defendant has alleged that those facts have been omitted to be pleaded. It is relevant to note that the 3rd defendant is not an illiterate. He cannot be allowed to take shelter that it has been omitted to be mentioned. In the absence of convincing reasons for receiving the additional written statement at the stage of trial, the additional written statement cannot be entertained. In genuine cases, where additional written statements are filed without*



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inordinate delay and the petition to receive the additional written statement could be allowed, provided it does not introduce a new or inconsistent plea.

But it was not so in this petition. Further the present case was filed in the year 2004. After travelling for a long period of 18 years, now only it was ripe for trial". Therefore, in the above said order, the reasons stated by the Trial Court are genuine grounds. Therefore, the Trial Court has passed a reasoned order and thereby, the order has to be confirmed. There is no infirmity or perversity found in the order passed by the Trial Court and hence the same does not warrant any interference.

10. In view of the above discussion, this court is of the opinion that the civil revision petition has no merits and deserves to be dismissed.

11. Accordingly, the Civil Revision Petition is dismissed. Considering the nature of the Suit, it is appropriate to direct the Trial Court to dispose the main case within **6 (six) months** from the date receipt of a copy of this order. No costs. Consequently, the connected civil miscellaneous petition is closed.

08.07.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

P.DHANABAL, J.,

mjs



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To

The I Additional District and Sessions Judge, Vellore District.

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