



C.R.P.(PD)(MD)No.101 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.03.2024

CORAM

THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD)No.101 of 2020
and C.M.P.(MD)No.481 of 2020

Rajaram

... Petitioner

Vs.

Kennady

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India to aside the fair and decreetal order dated 12.11.2019 made in I.A.No.03 of 2019 in O.S.No.376 of 2015 on the file of the Sub-Court, Thoothukudi and allow the above C.R.P.

For Petitioner : Mr.G.Kannan

For Respondent : Mr.S.Muthumalai Raja

ORDER

This Civil Revision Petition is directed against an order dated 12.11.2019 passed in I.A.No.03 of 2019 in O.S.No.376 of 2015 on the file



of the Court of Sub Court, Thoothukudi. The said O.S.No.376 of 2015 was filed seeking specific performance of an agreement of sale by the respondent herein. In the said suit, the petitioner herein got himself examined as D.W.1 and the defendant's side evidence was closed on 08.04.2019. Thereafter, the matter was posted for arguments. The plaintiff's side arguments were already concluded and when the matter is coming up for defendant's side arguments, at this stage, the present application has been filed seeking for reopening of examination of Alicia Rodrigo as D.W.2 on the ground that there was some financial transactions between the respondent/plaintiff and the said proposed DW2 and the same is very relevant, which is the basis for executing the agreement of sale for security purpose and therefore, the examination of the said person as D.W.2 is very much necessary. However, the said application was dismissed by the learned trial Court on the ground that this application is filed belatedly when the matter is coming up for arguments.

2. A perusal of the materials on record, it is noticed that the evidence of the defendant commenced on 01.04.2019 and the same was closed on 08.04.2019 ie., about in a week's period. According to the learned counsel



for the petitioner, the proposed witness was suffering from Kidney disease, the evidence on the side of the defendant was closed and therefore, he could not examine the said witness before closure of the evidence.

3. Considering the fact that the defendant's side evidence was closed within a week's time, this Court is of the considered view that the trial Court instead of dismissing the application ought to have afforded an opportunity to the petitioner herein to examine D.W.2 in order to conclude the suit proceedings. In case, if trial Court have adopted such liberal approach, the suit would have been disposed of at the earliest. But the suit is still pending because of the dismissal of the application in I.A.No.03 of 2019, resulting in stay of the further proceedings in the Civil Revision Petition.

4. Considering the entire facts and circumstances of the case, especially the fact that the evidence of the defendant was closed within a period of a week's time, this Court is inclined to permit the petitioner herein to examine the said witness as D.W.2.



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5. Accordingly, the order under revision is set aside and this Civil

Revision Petition is allowed. Consequently, I.A.No.03 of 2019 in O.S.No. 376 of 2015 is allowed, permitting the petitioner to examine Alicia Rodrigo as D.W.2 in the suit and the respondent herein will have an opportunity to cross examine the said witness in accordance with law. Considering the fact that the suit proceedings are stayed for the last about four years, the learned trial Court is directed to dispose of the suit as expeditiously as possible at any rate on or before 30.06.2024. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.03.2024

NCC : Yes/No

Index : Yes/No

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To

- 1.The Sub-Court, Thoothukudi.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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MUMMINENI SUDHEER KUMAR, J.

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