



**C.R.P(MD)Nos.335 and 336 of 2024**

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 22.02.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.ILANGO VAN**

**C.R.P(MD)Nos. 335 and 336 of 2024**

**and**

**C.M.P(MD)No.1557 of 2024**

Dharmaraj

...Petitioner in both CRPs

Vs.

Krishnamoorthy

...Respondent in both CRPs

**COMMON PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the Order and decree dated 23.11.2023 made in I.A.Nos.2 and 3 of 2023 in O.S.No.5 of 2021 on the file of the Additional District and Sessions Court, Virudhunagar.

For Petitioner : Mr. M.Thirunavukkarasu

For Respondent : Mr.R.G.Shankar Ganesh

(in both CRPs)



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**COMMON ORDER**

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This Civil Revision Petition is filed to set aside the order and decree dated 23.11.2023 made in I.A.Nos.2 and 3 of 2023 in O.S.No.5 of 2021 on the file of the Additional District and Sessions Court, Virudhunagar.

2. By order dated 12.02.2024, the petitioner was directed to deposit Rs.2,000/- to the respondent as cost. When the matter was posted for reporting compliance, the learned Junior counsel appearing for the respondent appeared and submitted that on the date of the order, he was not able to hear the order and he wants to argue the matter again. On his request, the petition is listed today for rehearing the matter. Learned counsel for the petitioner and the respondent heard in further.

3. Learned counsel for the respondent would submit that the respondent is now in Delhi and therefore it is not possible for him to come frequently to attend the Court proceedings.



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4. On the date of hearing, learned counsel for the petitioner would submit that the Advocate who is appearing for the revision petitioner did not cross examine the witness in full. Later only it came to his notice that some more facts are omitted to be put to the witnesses. Then only he has filed a petition for recall of P.W.1 for further examination.

5. Per contra, learned counsel for the respondent would submit that absolutely no proper reason was assigned by the revision petitioner for recalling P.W.1. C.R.P(MD)No.2461 of 2022 was filed by the revision petitioner against the rejection order. Since P.W.1 was already examined on 06.07.2023, without any proper reason, this petition is filed.

6. The trial Court dismissed the petition on the ground that Order 18 Rule 17 of C.P.C., is not aimed at helping the parties to exercise the power to recall witnesses. That can be exercised by the Court on its own, if it required further examination to arrive at a just



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conclusion. By pointing out the above said principle, the trial Court has dismissed the petition.

7. No doubt, Order 18 Rule 17 of C.P.C., permits only the Courts and not the parties. But when a suit is filed seeking the relief of specific performance, unless the parties are given full opportunity to put forth their case, a just decision could not be arrived at. On the sole ground, one more opportunity may be given to the petitioner to recall P.W.1 and do the further cross examination. The inconvenience that is caused to the respondent can be compensated by way of cost. But if the opportunity is denied, then, the revision petitioner may lose the opportunity.

8. Accordingly, this Civil Revision Petition is allowed and the order of the learned Additional District and Sessions Court, Virudhunagar, is set aside. Let the petitioner be allowed to recall the P.W.1, on payment of Rs.2,000/- as cost to the respondent, for the inconvenience caused to him. The respondent is at liberty to



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mention the date for his cross examination. On the convenient date to be fixed by the the trial Court, further cross examination may be taken.

9. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

**22.02.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To

1. The Additional District and Sessions Court, Virudhunagar.
2. Record Keeper, Vernacular Records,  
Madurai Bench of Madras High Court, Madurai.



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**G. ILANGO VAN, J.**

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