



C.R.P.(MD)No.3333 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD)No.3333 of 2023

V.Vijaya : Petitioner/Petitioner/
Plaintiff
Vs.
1.Palchamy
2.Valarmathi
3.Saravanan
4.Chelladurai : Respondents 1 to 4/
Respondents 1 to 4/
Defendants

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 17/11/2023 passed in IA No.270 of 2023 in OS No.61 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Natham.

For Petitioner : Mr.D.Rathinavel Pandian

For respondents : Mr.K.Arunraj

O R D E R

This civil revision petition has been filed seeking an order to set aside the fair and decreetal order, dated 17/11/2023 passed in IA No.270 of 2023 in OS No.61 of 2019 by the District Munsif-cum-Judicial Magistrate Court, Natham.



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2.The facts in brief:-

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A suit in OS No.61 of 2018 was filed by the petitioner herein as plaintiff seeking the relief of declaration, for consequential injunction and for costs. The defendants appeared, filed their written statement. The trial commenced. At that time, IA No.270 of 2023 was taken out by the plaintiff to scrap the evidence of PW1. That was dismissed by the trial court.

3.Against which, this civil revision petition is preferred.

4.Heard both sides.

5.Only short point arises for consideration.

6.The petitioner filed her chief in affidavit before the trial court. On 06/06/2023, documents were marked as Exs.A1 to A11 and Exs.C1 and C2 and posted for further process. But she did not appear. Later, she filed a petition to scrap her evidence stating that she is suffering heart ailment and the Doctor advised her to take complete bed rest. So, she filed a petition to scrap her evidence and in her place, her husband may be



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permitted to be examined. But the trial court, taking into note that the evidence cannot be scrapped and no document has also produced by the petitioner to show her heart ailment, dismissed.

7. Aggrieved over the same, the present petition has been filed by enclosing the copy of the Doctor Certificate, which is, dated 20/08/2023. But that document was not produced before the trial court at the time of hearing. Even though, it was obtained much earlier to the date of dismissal, the genuineness of the document and the illness of the petitioner must be properly enquired.

8. In the certificate, it is stated that she is suffering from heart ailment, chest pain and requires complete best rest. But the period of illness and rest period is not mentioned.

9. No doubt that for assessment with regard to the genuineness of the reason, the concerned Doctor must be examined before the trial court. Even though, that request was not made by the petitioner, the matter may be remitted back to the trial court to mark above said document.



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10. But, as stated above, the reason mentioned in the Doctor Certificate is doubtful. So, there shall be a direction to the trial court to summon the concerned Doctor and examine. The petitioner must also be present before the trial court to assess her physical illness in person by the trial court.

11. Scraping of the evidence is a serious issue. Simply because, a party is not able to appear before the trial court, scraping of the evidence is not automatic. Because, as mentioned by the trial court, the valuable right of cross examination to the opposite party will be denied. So, that should not be consequence.

12. So, to find out the truth, I am of the considered view that the matter is remitted back to the trial court. But it is made clear that scraping of the evidence is not permissible on any account. Only with regard to enabling the petitioner to appear before the concerned court in person, this court remitted the matter. If the petitioner is suffering from heart ailment and could not attend the court, the possibility of appointment of Commissioner must also be explored.



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13.With these, this civil revision petition stands

disposed of by remitting the matter to the trial court.

No costs.

22/03/2024

Index:Yes/No

Internet:Yes/No

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To,

1.The District Munsif-cum-Judicial
Magistrate,
Natham,
Dindigul District.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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