

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 06.08.2025

Order pronounced on : 29.08.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.Nos.1871, 1875 & 1884 of 2023
& CMP.No.12020 of 2023

Bharat Kumar K.Shah

..Petitioner in all CRPs

Vs.

1.Shri Vallabhacharya Vidya Sabha, Madras
Rep. by its Secretary
Manoj Kumar Sonthalia,
No.833, Periyar E.V.R Salai,
Gokul Bagh, Arumbakkam,
Chennai – 600 106.

2.Dwarakadas Govardhandas Vaishnav College,
Rep. by its Secretary,
No.833, Periyar E.V.R Salai,
Gokul Bagh, Arumbakkam,
Chennai – 600 106.

3.Project Expansion Committee,
Rep. by its Secretary,
Hari Kisahan Jhaver,
D.G.Vaishnav College,
No.833, Periyar E.V.R Salai,
Gokul Bagh, Arumbakkam,
Chennai – 600 106.

4.M.O.P Vaishnav College for Women,
Rep. by its Secretary, Madanlal Gupta,
No.20 IV Lane,
Off. Nungambakkam High Road,
Chennai – 600 034.



5. Governing Body of M.O.P Vaishnav College,
Rep. by its Chairman
Hari Kishan Jhaver,
No.20 IV Lane,
Off. Nungambakkam High Road,
Chennai – 600 034.

6. Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

7. The University of Madras,
Rep. by its Registrar,
Kamarajar Salai,
Chepauk, Chennai – 600 005.

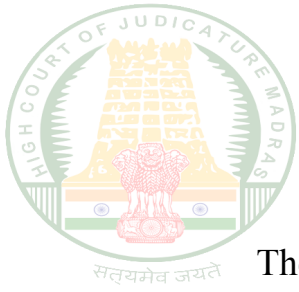
..Respondents in all CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 29.03.2023 made in I.A.Nos.3, 2 & 1 of 2022 in O.S.No.5150 of 2020 respectively on the file of the VI Additional City Civil Court, Chennai.

(In both CRPs)

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.S.Vijayaraghavan for R1
Mr.K.Shakespeare for R2
Mr.Babu Rangasamy for R4
Mrs.A.Shabnam Banu for R7
Mr.Akhil Akbar Ali
Standing Counsel (CMDA) for R6
No appearance for RR 3 and 5



COMMON ORDER

These revisions have been filed by the plaintiff in O.S.No.5150 of 2020, challenging the orders in I.A.Nos.1, 2 and 3 of 2022, in and whereby, the plaintiff sought for receiving additional documents on the side of the plaintiff, recall P.W.1 and to reopen the evidence of P.W.1.

2.I have heard Mr.R.Thiagarajan, learned counsel for the revision petitioner, Mr.S.Vijayaraghavan, learned counsel for the 1st respondent, Mr.K.Shakespeare, learned counsel for the 2nd respondent, Mr.Babu Rangasamy, learned counsel for the 4th respondent, Mrs.A.Shabnam Banu, learned counsel for the 7th respondent and Mr.Akhil Abkar Ali, learned Standing Counsel (CMDA) for the 6th respondent in all the revisions.

3.Mr.R.Thiagarajan, learned counsel for the petitioner would submit that the suit was originally filed before this Court in C.S.No.334 of 2013 and trial also commenced and the plaintiff examined himself in chief and was thereafter cross-examined extensively as well. The plaintiff had filed 27 documents on his side and the defendants marked 6 exhibits during cross-examination of P.W.1. The suit was thereafter transferred to the file of the City Civil Court, on account of enhancement of pecuniary jurisdiction of the City Civil Court, Chennai.



After transfer, the petitioner has taken out applications for reopening, recalling and marking documents. The learned counsel for the petitioner would bring to my notice that even when the suit was pending before this Court, these applications had been taken out and copies of the same were also duly served on the learned counsel for the 1st respondent.

4.However, it is the specific contention of the learned counsel for the petitioner that these applications were not sent to the City Civil Court along with the suit papers and therefore, fresh applications were necessitated. He would further state that when these applications were filed even before this Court, prior to transfer, the Court ought to have seen that the petitioner had taken diligent steps to bring on record the documents and therefore, ought to have allowed the applications, giving a fair opportunity to the petitioner to bring to the Court's notice, all relevant documentary evidence. He would also state that the reason for not producing the documents was also on account of the fact that the petitioner had intended to confront the defendants' witness with these documents during cross-examination, but however, the defendants did not enter the witness box and only in view of the same, the petitioner had to file the documents and for such purpose, he sought for reopening the evidence of the plaintiff and recalling P.W.1 to mark those documents. He would further state that in the interregnum period, Covid lock downs also intervened and therefore,

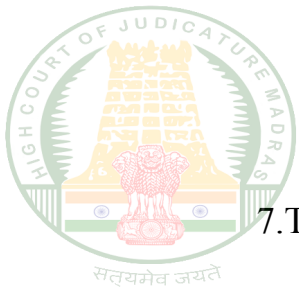


the petitioner was justified in not taking out the applications earlier. The learned counsel for the petitioner would place reliance on the following decisions:

1. *Vadiraj Naggappa Vernekar (D) through LLs vs Sharad Chand Prabhakar Gogate* (2009 4 SCC 410).
2. *KK.Velusamy Vs. N.Palanisamy* (2011 11 SCC 275).
3. *Levaku Pedda Reddamma and Others Vs. Gottumukkala Venkata Subbamma and Another* (2022 Live Law (SC) 533).

5.The learned counsel for the petitioner would therefore state that in view of the above, an opportunity ought to be granted to the revision petitioner and he even seeks for a time bound evidence being recorded for the purposes of marking the documents and cross-examination of P.W.1.

6.Per contra, Mr.S.Vijayaraghavan, learned counsel for the 1st respondent would first and foremost submit that the miscellaneous applications, which are claimed to have been served on him/his office, are denied and he would point out to the pendency of the suit before this Court and the fact that the defendants were satisfied with the answers elicited in cross-examination and proceeded to consciously waive their right to enter the witness box and thereafter it is not open to the petitioner to attempt to set at naught, vital admissions that were obtained in cross-examination of P.W.1, by seeking to file further and additional documents at the stage of arguments.



7. The learned counsel for the 1st respondent would further state that even assuming the applications have been filed before this Court, nothing prevented the petitioner from diligently taking necessary follow up steps to ensure that the applications were listed and orders passed on the same. The learned counsel for the 1st respondent would refer to the dates on which the suit was listed for arguments even before this Court, prior to transfer to the City Civil Court. The learned counsel for the 1st respondent would state that even thereafter when the suit was transferred to the file of the City Civil Court, in December 2022 alone, the plaintiff has taken out applications after getting adjournments only for advancing arguments and not on the ground of applications having been filed. Pointing out to the fact that even as early as on 09.12.2021, the records were received by the City Civil Court and on the date, the suit was also called and for close to 22 months, the petitioner never chose to take any steps to locate the earlier alleged applications filed before this Court or even file the present applications. The learned counsel would therefore state that there is absolutely no bonafide on the part of the petitioner and the belated applications have been rightly dismissed by the Trial Court.

8. Insofar as the arguments regarding the intervening Covid lock downs, the learned counsel for the 1st respondent would state that Courts were closed



only after mid March 2020 and the plaintiff has not explained his silence from June 2018, till March 2020. That apart, the learned counsel would also place reliance on the transfer request sought for by the petitioner and dismissal of the transfer application by this Court passing strictures against the petitioner. He would further state that the petitioner does not deserve any indulgence and he prays for dismissal the revisions.

9.I have considered the submissions advanced by the learned counsel for petitioner and the learned counsel for the respondents 2, 4 and 7 who support the case of the 1st respondent and also pray for dismissal of the revisions. Even according to them, the Trial Court has passed a well considered order which does not require to be interfered under Article 227 of Constitution of India.

10.I have carefully considered the submissions advanced by the learned counsel on either side.

11.The revision petitioner has filed the suit in C.S.No.334 of 2013 before this Court on the Original Side. It is admitted on both sides that after evidence was closed, the suit was posted for arguments before this Court and also adjourned on a couple of occasions for the purposes of hearing the arguments of the parties. Subsequently, the suit was transferred to the file of the City Civil



Court and renumbered as O.S.No.5150 of 2020. The first hearing before the City Civil Court was on 09.02.2021. It is the claim of the petitioner that in Diary Nos.115850, 115851 and 115852, the very same applications for reopening the evidence of plaintiff, recalling P.W.1 and to receive additional documents were filed on 16.10.2018 and these applications were at the unnumbered stage and not sent to the City Civil Court, along with the suit papers. Thereafter, before the City Civil Court, when the matter was proceeded from the state alone was stopped before this Court on the Original Side, the petitioner has taken out applications in I.A.Nos.1, 2 and 3 of 2022.

12.Though elaborate arguments advanced by the learned counsel for the petitioner regarding filing of these applications before this Court, after serving the counsel for the respondents and that the applications were not sent to the City Civil Court and therefore, an opportunity ought to be given to the petitioner, who cannot be accused of not being diligent, I find from the affidavit filed in support of I.A.Nos.1, 2 and 3 of 2022 that the petitioner merely states that even prior to the transfer of the suit to the City Civil Court, the petitioner had moved applications contending that those documents have a direct and substantial bearing in the matter in controversy and that the documents were found while searching for the records and therefore, he should be given an opportunity to mark the documents. In the affidavit, the petitioner has not even

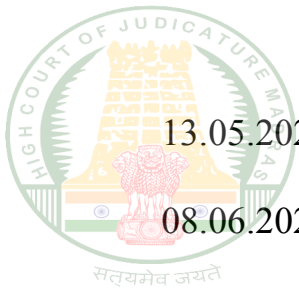


disclosed the details of the applications that he claims to have filed in Diary Nos.115850, 115851 and 115852 and the fate of the same.

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13.The respondents have strongly objected to these applications being entertained. The Trial Court, on enquiry, finding that the suit was posted for arguments before the High Court, even on three hearings for arguments, no steps were taken to follow up the said applications taken out by the petitioner. The Trial Court has also found that a transfer petition had been filed by the petitioner and the same came to be dismissed by this Court, with a direction to hear the arguments in the suit on a day to day basis and that this Court had directed that "arguments alone will have to be advanced. The duty is cast on the counsel for the plaintiff to commence advancing arguments." and reiterated the same at a later part of the order, by stating that "the trial has commenced, the trial had ended. It is now the burden of the advocate to argue the case". Only after the orders passed by this Court dated 04.11.2022, the present applications have been filed.

14.In the course of arguments, the learned counsel for the petitioner would bring to my notice that Diary Nos.115850, 115851 and 115852, which according to him were taken for the very same purposes of reopening and recalling and marking additional documents, were returned by the Registry on



13.05.2021 and the same have been taken returned by the counsel on

08.06.2021 even before this Court. While so, I am unable to understand as to

what prevented the petitioner from representing the applications immediately after 08.06.2021. No steps have been taken by the petitioner to diligently follow up the matter and obtain orders in the interlocutory applications. Moreso, when the suit was posted for arguments, even before this Court, prior to the transfer to the City Civil Court at least when the transfer application was heard and disposed of also, the petitioner could have brought it to the notice of this Court that the applications have been filed for marking additional documents and sought for suitable directions in that regard. Even that has not been done. The petitioner allowed this Court to pass orders observing that only arguments will have to be advanced, which is reiterated in the said order at more than one place as well and further directions have also been issued by this Court to hear arguments on a day to day basis and dispose of the suit expeditiously. Therefore, in the light of the above facts, I will now proceed to see whether the ratio laid down in the decisions that have been relied on would have to be applied to the facts of the present case.

15. In *Vadiraj Naggappa Vernekar's case*, the Hon'ble Supreme Court held that provisions of Order XVIII Rule 17 of CPC will have to be interpreted to include applications to be filed by the parties for recalling of witnesses, only



to enable to the Court while deciding a suit, to clarify any doubts which it may have with regard to the evidence led by the parties and the provisions cannot be used to fill up omissions in the evidence of a witness who has already been examined. The Hon'ble Supreme Court further held that though power to recall a witness under Order XVIII Rule 17 of CPC can be exercised even by the Court on its own motion or an application filed by any of the parties to the suit, it is to be sparingly exercised and only in appropriate cases and not as a general rule, merely on the ground that such recalling and reexamination would not cause any prejudice to the parties and further, it should also not be invoked to permit filling up of lacuna in the evidence of the witness already recorded, but only to clear any ambiguity that may have arisen during the course of examination.

16.In *K.K.Velusamy's case*, the Hon'ble Supreme Court held that the power of the Court to reopen evidence and recall witness can be exercised in appropriate cases, even when arguments have concluded and the case has been reserved for judgment.

17.In *Levaku Pedda Reddamma's case*, the Hon'ble Supreme Court held that the Trial Court and the High Court had erred in not permitting the defendant to produce documents as the relevance of the documents can be examined by the Trial Court on the basis of evidence to be led, but to deprive a



party to the suit to not even file documents, even if there is some delay would lead to denial of justice. The Hon'ble Supreme Court further held that rules of procedure being a hand maid of justice, even if there is some delay, the Trial Court should have imposed some costs rather than to decline production of the documents itself.

18.The learned counsel for the 1st respondent has placed relied on the following decisions:

- 1.*M/s.Shiv Cotex Vs. Tirgun Auto Plast P.Ltd. And Others* (2011 (9) SCC 678).
- 2.*M/s.Pagai Construction Tr.Prop. Vs. M/s.Gupta Building Material Store* (2013 (14) SCC 1).
- 3.*Gayathri Vs. M.Girish* (2016) 14 SCC 142).
- 4.*Kanniyathal Vs. Govindasamy* (CRP.No.2206 of 2021 dated 06.10.2022).
- 5.*Shubhkaran Singh Vs. Abhayaraj Singh and Others* (2025 INSC 628).

19.Apart from placing reliance on the very same decisions on which the learned counsel fro the petitioner has also relied on namely, the judgment of the Hon'ble Supreme Court in *Vadiraj Nagappa Vernekar* as well as *K.K.velusamy's cases*, the learned counsel for the 1st respondent has also extensively relied on the common order in Application Nos.1245 to 1248 of 2022. No doubt, the Hon'ble Supreme Court has repeatedly held that the power to recall witnesses can be permitted, even after conclusion of arguments and the



matter is reserved for judgment. However, in all the decisions, it has been uniformly held that if such request for reopening and recalling any witness would cause any prejudice to other party, then the applications cannot be allowed merely on the ground that no prejudice would be caused to the other party and consistently, it has been held that in all the cases that, if it is an attempt to fill up lacuna, then the same is not permissible.

20. In the present case, after examination of P.W.1 in chief and cross, the defendants have thought it fit to not lead any oral evidence and were satisfied with the evidence already on record through P.W.1 and therefore, when the matter was listed for defendant's evidence before the learned Master of this Court, the defendants have stated that they are not leading any oral evidence. Based on the same, the suit has been posted for arguments and the matter has admittedly been adjourned only for hearing the arguments. I do find any adjudication either before this Court when the suit was pending or after transfer to the City Civil Court that the petitioner has brought it to the notice of the Court that he has taken out applications for reopening and recalling P.W.1 for marking additional documents and on that score, adjournments have been granted.

21. In the light of the above, the order of this Court in A.Nos.1245 to 1248 of 2022 also assumes significance. This Court found that the petitioner



has been in the chronic habit of moving forum to forum, by filing suits, questioning the letters/notices issued by the defendants. This Court has specifically observed that trial has already concluded in the present suit and the burden of the advocates to argue the case alone remains. Again, while disposing of the applications, this Court, has issued a direction to the VI Additional City Civil Court to dispose of the suit on or before 30.11.2022, by hearing arguments on a day to day basis and there can be no issues not to dispose of the suit. These orders were passed very much in the presence of the revision petitioner. The revision petitioner has not chosen to seek for any liberty to move the said applications, or at least brought it to the notice of this Court that he had already filed such applications. It is only after disposal of the applications on 04.11.2022, the present interlocutory applications have been filed before the Trial Court in December, 2022.

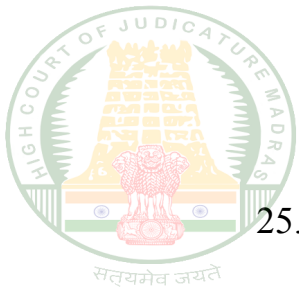
22.The contention of the learned counsel for the 1st respondent that the applications, if allowed, will permit the petitioner to fill up lacuna, cannot be lightly brushed aside. It is already seen that after examination of the plaintiff as P.W.1, the defendants have consciously waived their right to lead oral evidence before the Trial Court and therefore, at this stage, if the petitioner is allowed to bring in additional documents and lead further evidence, then it would certainly cause serious prejudice to the defendants on whom, a right has already accrued,



on account of the admissions in cross examination of P.W.1. The Courts have also held that such exercise of reopening and recalling cannot be allowed in a routine manner and can be allowed only sparingly, that too when it is found to be not an attempt to fill up lacuna.

23. Even in *Levaku Pedda Reddamma's case*, the Hon'ble Supreme Court found that there was only some delay, but here there has been huge and inordinate delay, which has not even been explained. In fact, as already discussed when the petitioner had taken return of the applications, even in June 2021, he has not chosen to act further thereupon, diligently and after lapse of 1 ½ years, that is December 2022, he has chosen to take out fresh applications and not even represent the applications, that according to him, were filed even before this Court much earlier. Therefore, I do not see how this decision would also be applicable to the facts of the present case.

24. In *M/s. Bagai Constructions's case*, the Hon'ble Supreme Court finding that the documents remained in the exclusive possession of the plaintiff and the plaintiff has not placed the same on record, he cannot be permitted to fill up the lacuna, by permitting him to bring on record the additional documents belatedly. The ratio laid down in *M/s. Bagai Constructions's case*, would, in fact, squarely apply to the facts of the present case.

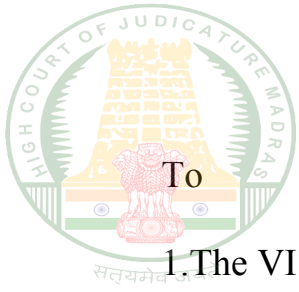


25.The conduct of the petitioner is clearly negligent and the present applications are not a bonafide attempt to genuinely rely on the additional documents, but appears to be clearly an attempt to fill up lacuna, arising out of certain admissions made by him as P.W.1 in cross examination. Further, I find that the Trial Court has passed a well reasoned order, giving satisfactory and acceptable reasons for dismissing the applications. Sitting in revision, that too, under Article 227 of the Constitution of India, I do not see any grounds available to set aside such an order, exercising judicial discretion to not permit additional documents to be introduced and consequently, dismissing reopen and recall applications as well.

26.In fine, the Civil Revision Petitions are dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

29.08.2025

Speaking/Non-speaking order
Index : Yes/No
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To

1.The VI Additional City Civil Court, Chennai.

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2.Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

3.The University of Madras,
Rep. by its Registrar,
Kamarajar Salai,
Chepauk, Chennai – 600 005.



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CRP.Nos.1871, 1875 & 1884 of 2023



P.B.BALAJI.J.

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Pre-delivery order made in
CRP.Nos.1871, 1875 & 1884 of 2023
& CMP.No.12020 of 2023

29.08.2025