



WEB COPY



C.R.P.(PD)Nos.4499 & 4502 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)Nos.4499 & 4502 of 2024
and C.M.P.Nos.25102 & 25108 of 2024

In both CRPs.

K.Manimaran

.. Petitioner

Vs

1.Dr.A.Daniel Rajesh Babbu

Represented by his Power Agent

Mr.Lakshmikanth Nagandla

2.Dr.N.Kavitha

Represented by his Power Agent

Mr.Lakshmikanth Nagandla

3.M.S.Builders,

Represented by its Proprietor M.S.Sabesan

At No.11-A, first street,

East Abiramapuram,

Mylapore, Chennai-600 004.

.. Respondents



C.R.P.(PD)Nos.4499 & 4502 of 2024

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the rejection order dated 29.04.2024 made in I.A.SR.Nos.18286 & 25872 of 2024 in O.S.No.3152 of 2022 on the file of the VII Assistant City Civil Court at Chennai.

In both CRPs.

For Petitioner : Ms.G.Abarna

For Respondents : Mr.S.Ramesh Kumar

COMMON ORDER

These two civil revision petitions arise against the order passed by the learned VII Assistant Judge, City Civil Court at Chennai in I.A.SR.Nos.18286 & 25872 of 2024 dated 29.04.2024.

2.The civil revision petitioner is the 1st defendant in the suit. O.S.No.3152 of 2022 is a suit for permanent injunction restraining the 1st defendant, his men, agent, servant from interfering with the peaceful possession and enjoyment of a covered car parking allotted to the plaintiff by the builder.



C.R.P.(PD)Nos.4499 & 4502 of 2024

3.I need not delve deep into the facts of the case for the purpose of disposal of these revisions. Suffice it to state that the evidence of the plaintiffs was closed on 07.03.2023. From 13.03.2023 till 06.11.2023, the matter was adjourned to enable the defendants to enter the witness box and depose. The 1st defendant, for whatever reason, did not present himself in Court. He finally did so on 06.11.2023. He completed his chief-examination and marked Exs.B1 to B4. Thereafter, the matter was adjourned to 12.12.2023 for cross-examination of the defendants. The 1st defendant did not turn up on that day and therefore, the matter was adjourned to 09.01.2024. On 09.01.2024 too, he was not present, so the matter was adjourned to 06.02.2024. On 06.02.2024 also, he was absent. So the matter stood adjourned to 19.02.2024. The 1st defendant did not present himself on 19.02.2024 also. The learned Trial Judge, being left with no other option, eschewed the evidence of the 1st defendant, as he did not present himself for cross-examination.

4.The 1st defendant, thereafter, filed two applications in I.A.SR.No.25872 of 2024 to restore his chief-examination and I.A.SR.No.18286 of 2024 for reopening the evidence, which was already closed.



C.R.P.(PD)Nos.4499 & 4502 of 2024

5.The learned Trial Judge dismissed both the applications on the ground since the evidence of the 1st defendant has been eschewed on 09.01.2024, the question of reopening the evidence does not arise and similarly, restoration of evidence also does not arise for consideration.

6.Aggrieved by the same, the present civil revision petitions are at the instance of the 1st defendant.

7.When the matter came up for admission, I heard Ms.G.Abarna and requested her to serve the papers on Mr.S.Ramesh Kumar, learned counsel, who represents the plaintiffs in the Court below. The papers have been served and the matter was taken up today for final disposal.

8.Ms.G.Abarna submitted that if one opportunity is granted to her client, he will co-operate with the Trial Court for disposal of the case.

9.Mr.S.Ramesh Kumar pointed out that, consistently from March 2023 to November 2023, the defendant had kept away from the Court and that even thereafter, he never turned up for cross-examination and hence, he states that no indulgence should be given to the civil revision petitioner.



10. I have carefully perused the records and analysed the submissions of both the counsel.

11.The suit is one for injunction relating to a car parking area in an apartment complex. The plaintiffs have presented the suit in the year 2022 and is waiting for a judgment to be passed in the case. Their grievance is that the 1st defendant is occupying the car park, which has been allotted to them and therefore, they are put to irreparable prejudice.

12.The 1st defendant has been resisting the suit by filing the written statement. He has, no doubt, taken all tricks available in the book to avoid the witness box. The learned Trial Judge granted him a long rope. Finally, when no option was left to him, the 1st defendant hung himself in that rope.

13.As the evidence has been eschewed by the learned Trial Judge, there is hardly anything left for the 1st defendant to argue. The difficulty for the plaintiffs would be, as the evidence has been eschewed, and if a decree is passed, it is possible for the 1st defendant to argue the decree is an *ex parte* one and thereby, file further applications to set aside the same and increase the agony of the plaintiffs.



C.R.P.(PD)Nos.4499 & 4502 of 2024

14.The solution, I feel, can be arrived at by restoring the chief-examination of D.W.1 and directing the plaintiffs to complete the cross-examination on the next date of hearing. As the 1st defendant has prolonged the matter, I am inclined to impose costs on the 1st defendant so that he will feel the pinch and co-operate with the Trial Court for the disposal of the suit.

15.Ms.G.Abarna states that the proceedings are pending to implead the legal heirs of the 2nd defendant. When the relief is sought for as against the 1st defendant, the purpose of taking steps for the 2nd defendant might not be essential. Be that as it may, it is not for the 1st defendant to take advantage of the death of the 2nd defendant and avoid the witness box.

16.In the light of the above discussions, I pass the following directions:

(i) The evidence of D.W.1 will stand restored on condition that the 1st defendant pays to the plaintiffs a sum of Rs.10,000/- (Rupees Ten thousand only) on or before 20.01.2025;

(ii) In case the cost of Rs.10,000/- is not paid, the civil revision



C.R.P.(PD)Nos.4499 & 4502 of 2024

petitions will stand dismissed without further notice to this Court;

WEB COPY

(iii) On 20.01.2025, the 1st defendant shall present himself before the Court and the plaintiffs will cross-examine the 1st defendant till 24.01.2025;

(iv) In case the 1st defendant does not appear before the Court on that day, the Court need not wait any further and proceed further in the suit.

17. With the above directions, the civil revision petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2025

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

kj



WEB COPY



C.R.P.(PD)Nos.4499 & 4502 of 2024

V. LAKSHMINARAYANAN,J.

Kj

To

VII Assistant Judge,
City Civil Court at Chennai.

C.R.P.(PD)Nos.4499 & 4502 of 2024
and C.M.P.Nos.25102 & 25108 of 2024

03.01.2025