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C.R.P.(PD)Nos.5268 & 5273 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)Nos.5268 & 5273 of 2024
and C.M.P.Nos.29471 & 29473 of 2024

In both CRPs.

A.Sumathi

.. Petitioner

Vs

1.Sivakumar

2.Shanthi

.. Respondents

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 12.11.2024 passed in I.A.Nos.9 & 10 of 2024 in O.S.No.433 of 2019 on the file of the II Additional District Munsif Court at Salem.

In both CRPs.

For Petitioner : Mr.B.Ram Prasath

For Respondents : Mr.L.Mouli



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COMMON ORDER

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These civil revision petitions arise against the order in I.A.Nos.9 & 10 of 2024 in O.S.No.433 of 2019 on the file of the II Additional District Munsif Court at Salem, dated 12.11.2024.

2.The civil revision petitioner is the plaintiff in the suit. O.S.No.433 of 2019 is a suit for permanent injunction restraining the defendants and their men from in any manner interfering with the right of the plaintiff in administering herbal medicines under the name and style of “Sri Vaitheeswarar Thunai Vinaitheertha Gounder Jaundice Herbal Treatment Centre”.

3.For the purpose of disposal of these revisions, there is no necessity to go into the details of the pleadings.

4.The plaintiff had been subject to cross-examination and the defendants have also deposed in chief. The matter has been posted for cross-examination of the defendants. At that stage, the plaintiff sought for adjournments. The Trial Court, taking into consideration the plea of



the parties, granted adjournment. On the adjourned date too, the counsel for the plaintiff sought for time and time was also granted by the Trial Court. Thereafter, the matter was adjourned on two further occasions, still the plaintiff did not cross-examine D.W.1. Being left with no other option, the Trial Court closed the evidence of D.W.1 and listed the matter for arguments.

5. At that stage, the plaintiff came forward with two applications in I.A.Nos.9 & 10 of 2024 seeking to re-open the evidence of the defendants and to recall D.W.1 for cross-examination. The ground given by the plaintiff for non appearance of her counsel to cross-examine the D.W.1 was that the counsel's mother was hospitalised and the co-counsel was afflicted with viral fever. These two applications were strongly opposed by the defendants. They pleaded that the costs that had been earlier imposed by the Trial Court in I.A.No.8 of 2024 had not been paid by the plaintiff. They also pointed out that the matter had suffered several adjournments before the evidence was closed. They also pleaded these averments that the counsel's mother and the co-counsel were sick are false. Hence, they pleaded that the petitions be dismissed.



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6.The learned Trial Judge agreed with the defendants and dismissed the petitions. Hence, these revisions.

7. When the matter came up for admission on 08.01.2025, Mr.A.Vijayakannan reported that if one opportunity is granted to him, he would complete the cross-examination of the defendants. Taking into consideration the plea that had been made, I had issued notice to the learned counsel who represents the defendants in the Court below. When I took up the matter today, Mr.L.Mouli represented that he has entered appearance on behalf of both the respondents.

8. I heard Mr.B.Ram Prasath for the civil revision petitioner and Mr.L.Mouli for the respondents. I have carefully gone through the records.

9. The narration of the facts shows that the reason, the plaintiff did not cross-examine D.W.1, was that the counsel's mother was hospitalised and the other counsel had fallen sick.

10. In the adversarial system that we follow, a party can engage a counsel. It is not the party who cross-examines the witness, but it is the



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counsel, who has been entrusted with the case, who completes the said task. If the counsel suffered from personal inconvenience and the other counsel was sick, this Court cannot expect the party to cross-examine D.W.1. However, as pointed out by Mr.L.Mouli, the plaintiff has, for reasons best known to her, availed several opportunities that had been granted by the Court for cross-examination of D.W.1 and still did not cross-examine D.W.1.

11. I should also recollect that in case the evidence of D.W.1 is closed without cross-examination, there may not be much for the plaintiff to argue in the suit. The evidence would go uncontroverted and there is a risk that the suit itself might be dismissed. Having waited before the Court for five years, such treatment to a party, who has knocked on the doors of the Court, will be very harsh.

12. In the light of the above discussion, I am inclined to set aside the order passed by the learned II Additional District Munsif at Salem in I.A.Nos.9 & 10 of 2024 in O.S.No.433 of 2019 dated 12.11.2024 on the following conditions:

(i) The plaintiff shall pay a sum of Rs.5,000/- per application, in all



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Rs.10,000/- (Rupees Ten thousand only) to D.W.1, by **29.01.2025**.

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(ii) On **30.01.2025**, D.W.1 shall be present in Court. The learned Trial Judge, on confirmation that the costs of Rs.10,000/- have been paid, shall permit the plaintiff to cross-examine D.W.1.

(iii) In case the costs are not paid, the benefit of this order will not enure in favour of the plaintiff.

(iv) The learned Trial Judge is requested to act on the web copy of this order and not wait for the certified copy of this order.

13. These two civil revision petitions stand allowed on the above terms. Consequently, connected miscellaneous petitions are closed.

22.01.2025

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

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V. LAKSHMINARAYANAN,J.

Kj

To

II Additional District Munsif at Salem.

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and C.M.P.Nos.29471 & 29473 of 2024

22.01.2025