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C.R.P.No.5249 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-01-2025

CORAM

THE HONOURABLE MR JUSTICE V. LAKSHMINARAYANAN

CRP NO. 5249 of 2024
AND CMP No. 29364 of 2024

Ramar

.... Petitioner

Vs

Kuppayee

.... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the order and decretal order in IA No.95/2024 in AS No.23/2024 on the file of the learned Principal District Judge, Kallakurichi dated 15.10.2024.

For Petitioner : Mr.M.Muruganantham
For Respondent : No appearance

ORDER

This Civil Revision Petition arises against the order passed by the learned Principal District Judge at Kallakurichi in I.A.No.95 of 2024 in A.S.No.23 of 2024 dated 15.10.2024.

2. A.S.No.23 of 2024 arises against the judgment and decree passed by the learned Subordinate Judge at Ulundurpet in O.S.No.421 of 2018 dated 31.10.2018.

The suit was for recovery of money. The suit came to be decreed. Hence the



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appeal before the lower appellate Court.

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3. It is the plea of the defendant that he helped one Govindan when the latter required a sum of Rs.50,000/- as loan. He pleaded that the understanding between the plaintiff/respondent herein and the said Govindan was that the loan would be given to the defendant, but it will be repaid by Govindan. In order to substantiate the said plea, he had examined one Manju, the wife of Govindan as D.W.3. The defendant did not examine Govindan, during the course of trial on account of the fact Govindan had gone to foreign country.

4. Pending the appeal, the defendant took out an application under Order XLVII Rule 1 of the Code of Civil Procedure to examine the said Govindan as a witness. The said application was dismissed. Hence the revision.

5. I heard Mr.M.Muruganantham for the civil revision petitioner. The respondent, though served, through her counsel before the lower Court, has not entered appearance. The name of the respondent is printed in the cause list. Hence, I took up the matter for final disposal.

6. Though Mr.Muruganantham would urge that Govindan is a necessary witness in the suit and the defendant was not in a position to examine Govindan on account of the fact Govindan was not available in the country, I am not inclined to



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go into the merits of the said application at this stage. This is because, an application under Order XLI Rule 27 of the Code of Civil Procedure cannot be dealt independently from the appeal. The position of law has been laid down by the Supreme Court in **Union of India -vs- Ibrahimuddin and Another (2012) 8 SCR 35**. The Supreme Court had directed that an application under Order XLI Rule 27 of the Code would have to be dealt with at the time, when the learned appellate Judge takes up the main appeal for disposal. The learned Principal District Judge at Kallakurichi has treated as if the application under Order XLI Rule 27 can be dealt with independently from the appeal. Such an approach falls foul of the aforesaid verdict. Hence, I am constrained to interfere.

6. Accordingly, the Civil Revision Petition stands allowed on the following terms.

- The order passed by the learned Principal District Judge, Kallakurichi dated 15.10.2024 in I.A.No.95 of 2024 in A.S.No.23 of 2024 is set aside.
- I.A.No.95 of 2024 will stand restored on to the file of the learned Principal District Judge at Kallakurichi.
- The learned Judge, at the time of disposal of the appeal, shall consider I.A.No.95 of 2024. In case the learned Judge feels that the evidence of Govindan is essential, it is always open to the learned Judge at that stage to allow the said application, record the chief and cross examination of Govindan and dispose of the



appeal.



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V. LAKSHMINARAYANAN, J.

KST

7. With the above directions, the civil revision petition is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

23.01.2025

Index : Yes/No
Neutral Citation : Yes/No
KST

To

The Principal District Judge
Kallakurichi.



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