



C.R.P.(MD)No.1597 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.06.2026**

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(MD)No.1597 of 2026
and
C.M.P.(MD)No.7693 of 2026

P.Sharmila

... Petitioner

vs.

T.Thirupathy

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order insofar as “further DWs” made in O.S.No.376 of 2021 on the file of the learned V-Additional District and Sessions Judge, Madurai, dated 08.06.2026, by allowing this Civil Revision Petition.

For Petitioners : Ms.S.K.Pavithra

For Respondent : Mr.Niranjan S.Kumar

ORDER

This Civil Revision Petition challenges the docket order of the learned V-Additional District and Sessions Judge, Madurai, dated 08.06.2026, whereunder the matter was adjourned to enable the defendant to let in further evidence. This case has an earlier history, which is narrated hereunder:



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O.S.No.376 of 2021 is a suit for recovery of money for a sum of

Rs.23,69,333/- with subsequent interest. The plaintiff claimed that the defendant had borrowed Rs.20,00,000/- and executed a promissory note on 15.03.2020, assuring her that the said sum would be returned on demand. The plaintiff pleaded that she had made a demand, but the defendant defaulted. Hence, she presented the suit seeking the aforesaid relief.

2. Summons were served on the defendant, and the defendant entered appearance through a counsel, one among the several counsel engaged by him throughout the course of the trial. In the written statement, he conceded that the pronote had been executed by him. However, he pleaded that it was not meant to be a demand promissory note, but had been executed in the course of the business carried on by him and one Balachandran, the husband of the plaintiff.

3. The evidence of P.W.1 and D.W.1 were completed. The matter was posted for further evidence of the parties. At that stage, the defendant presented an application under Order VIII Rule 1A(3) of the Code of Civil Procedure. This application was withdrawn. Thereafter, another counsel was engaged to defend him. This counsel, yet again, filed an application in I.A.No.5 of 2026.



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4. The learned Trial Judge dismissed the said application. Even in the order passed by the learned Trial Judge in I.A.No.5 of 2026, he pointed out that the defendant had never cooperated with the Court for the disposal of the suit. He also pointed out that one counsel after another was being changed in order to ensure that the suit did not see its logical end. Challenging the order, a revision came before this Court. When the revision in C.R.P.(MD)No.1215 of 2026 came up for disposal, Mr.Siddarth urged that if one opportunity was granted to the defendant to enter the witness box and mark the documents for which he had sought leave, it would be in the interest of justice. Though Mr.A.Haja Mohideen stoutly opposed the revision, stating that it was yet another tactic adopted by the defendant in order to prolong the litigation, considering that a request had been made by the defendant to give an opportunity to mark the documents, this Court interfered with the order dismissing the application under Order VIII Rule 1A(3) and allowed the revision. The following directions were given in the revision:

“i) The order passed by the learned V Additional District Judge at Madurai in I.A.No.5 of 2026 in O.S.No. 376 of 2021 dated 11.03.2026 is set aside on condition that the defendant pays the plaintiff a sum of Rs.10,000/- by 30.04.2026.

ii) On 01.06.2026, the learned V Additional District



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Judge at Madurai, shall verify as to whether the cost has been paid as directed by this Court.

iii) In case, the cost has been paid, the learned Judge shall allow the defendant to mark the documents filed along with I.A.No.5 of 2026.

iv) The defendant will be permitted a day or two at the maximum for the purpose of marking the documents and not any further time.

v) Mr.A.Haja Mohideen undertakes to cross-examine the defendant on these documents on the day they are marked or on the subsequent day.

vi) The learned Judge is requested to dispose of the suit itself by 30.06.2026.

vii) In case, the cost is not paid, the Civil Revision Petition will stand dismissed without further notice to this Court.”

5. It is not in dispute that, pursuant to the order passed by this Court, the defendant paid a sum of Rs.10,000/- imposed as costs. He also entered the witness box and marked the documents pursuant to the liberty granted by this Court. Unfortunately, this is a case where the liberty granted by this Court has been misused.

6. After completing his evidence, the defendant came up with a new ploy of summoning the husband of the plaintiff to depose as a witness on his side. The learned Judge has permitted such a course. Hence, this revision.



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7. I heard Ms.S.K.Pavithra for the Civil Revision Petitioner and Mr.Niranjan S.Kumar for the Respondent.

8. Ms.S.K.Pavithra states that, in terms of the order dated 28.04.2026, an opportunity had been granted to the defendant to reopen his side of evidence and mark the documents, and thereafter for the parties to proceed with arguments on merits. Instead, the learned Trial Judge had literally reopened the case by permitting the defendant to adduce fresh evidence. She states that, taking advantage of the said order, the defendant had filed an application to summon the husband of the plaintiff.

9. *Per contra*, Mr.Niranjan S.Kumar urges that it is the duty of the defendant to discharge the plea taken by him, and it is towards that end that he seeks to summon the husband of the plaintiff. He states that if the husband of the plaintiff appears, he will examine him in chief and also make him available for cross-examination on the very same day.

10. I have carefully considered the submissions of both sides. I have gone through the records.



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11. A perusal of the order dated 28.04.2026 shows that the defendant was permitted to mark the documents and depose in support of the said documents. An opportunity was granted to the plaintiff to cross-examine the defendant on the evidence so tendered, either on the same day or on a subsequent day. Thereafter, the parties were directed to proceed with arguments, and the learned District Judge was requested to pronounce judgment by 30.06.2026.

12. It was not a case where the Court permitted the entire evidence to be reopened. The parties were not placed in a position as if all the evidences that had earlier been recorded had been nullified. It was not a case where this Court ordered a “de novo” trial. Since the Court had accepted the proof affidavit and rejected only the documents, this Court passed the order dated 28.04.2026, permitting the defendant to mark the documents.

13. The direction issued to the learned District Judge to pronounce judgment by 30.06.2026, in itself, shows that there was no direction or leave granted under the said order for the defendant to reopen the entire evidence, as is presently sought. It is a settled position of law that an adversary to a suit cannot summon the opposite party as a witness on his side. The Privy Council pointed out



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in **Kishori Lal v.Chuni Lal, (1909) 36 IA 9** condemned such a practice. A plaintiff must win on his own strength of evidence, not by forcing the defendant into the witness box to extract evidence under the guise of examination in chief and vice versa. The same rule applies to the defendant also. The purpose for having such a rule is to ensure the integrity of adversarial trials and also to prevent the parties from forcing their appellants to build a case against them. [Also See, **Jortin Antony & Ors. v. Sree Padmanabha Dasa Marthanda Varma and Ors, AIR 2000 Ker 369 (DB)**]. In fine, the law prohibits one party from summoning the adversary to depose on his side.

14. In terms of Section 120 of the Indian Evidence Act, there is an interchangeability in the evidence that may be given by a husband and wife. A husband can depose on behalf of the wife, and the wife can depose on behalf of the husband. When such is the legal position, the attempt of the defendant to summon the husband of the plaintiff is an indirect attempt to bypass the aforesaid rule as well as Section 120 of the Evidence Act. I should only add that this Court in April, and the learned Trial Judge in June, have fallen prey to the dilatory tactics indulged in by the defendant. It is time to put an end to them.



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15. In the light of the above discussions, the Civil Revision Petition is **allowed**. The learned V-Additional District and Sessions Judge, Madurai, is requested to hear the arguments of both sides and pronounce judgment, as directed by this Court, on or before **30.06.2026**.

There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

23.06.2026

Index :Yes / No

Internet :Yes / No

NCC :Yes / No

Nsr

Note: (i) Upload Order Copy by 23.06.2026.

(ii) Registry shall communicate this order to the learned V-Additional District and Sessions Judge, Madurai, by e-mail.

To:

The V-Additional District and Sessions Judge, Madurai.



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V.LAKSHMINARAYANAN, J.

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