

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM**

**PRESENT: Tmt. S.SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML**

**ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM**

**WEDNESDAY, THE 26<sup>TH</sup> DAY OF OCTOBER 2022**

**IA.NO.235/2022 AND IA.NO.419/2022 IN OS.NO.14/2016**

Thiyagarajan

---- Petitioner/ 2<sup>nd</sup> defendant

VS

Muthukrishnan

Sulochana

-----Respondents/ plaintiff/ 1<sup>st</sup> defendant

|                                |                                                                                                                                |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner                 | Thiru.N.Rajendiran, Advocate                                                                                                   |
| For Respondent No.1            | Thiru.B.Saravanan, Advocate                                                                                                    |
| For Respondent No. 2           | Exparte in the petition                                                                                                        |
| Relief Claimed in IA. 235/2022 | This petition is filed under Section 151 of CPC to reopen the PW1 evidence so as to cross-examine by 2 <sup>nd</sup> defendant |
| Relief Claimed in IA. 419/2022 | This petition is filed under Order 18 Rule 17 of CPC to recall the PW1                                                         |
| Final Hearing                  | 14.10.2022                                                                                                                     |

Upon hearing the arguments of petitioner and respondent perusal of the entire records and having stood over for consideration till this day, this court delivers the following

**COMMON ORDER**

**The case of petitioner in IA. 235/2022:**

1. The petitioner is the 2<sup>nd</sup> defendant, the respondents are the plaintiff and 1<sup>st</sup> defendant in the original suit. The plaintiff has filed the suit for the relief of declaration and injunction against the defendants. The petitioner herein is contesting the suit and has filed the written statement also. The plaintiff side evidence being PW1 was examined in chief and the suit was posted for cross of PW1 by 2<sup>nd</sup> defendant on 11/03/2022. On 9/3/2022, the petitioner herein has suffered from severe fever and could not go anywhere and for which has taken the home remedies. Therefore, the petitioner herein could not be able to give appropriate information about the case to the counsel and also the petitioner was

not able to attend the court on that day. The act of the petitioner is neither willful nor wanton. The petitioner came to know about the close of PW1 evidence recently and therefore the petitioner has come up with this petition to cross examine the PW1 which was closed on 11/3/2022. Therefore, the petitioner has come up with this petition to reopen the PW1 evidence so as to cross-examine by 2<sup>nd</sup> defendant. If this petition is not allowed, the petitioner will be put to irreparable loss and injury. Hence, this petition.

The case of the Respondent in 235/2022:

2. The respondents vehemently oppose the petition filed by the petitioner and this petition is liable to be dismissed. This court has given sufficient opportunities to the defendant to cross-examine the PW1 witness. But the petitioner has turned down and therefore this court has closed the PW1 evidence on 11/3/2022 and on that day, the petitioner was also present in the court. The petitioner does not have a strong case to prove on his side and therefore has filed this petition to drag on the suit proceedings. Therefore, the respondent prays for the dismissal of this petition with cost.

The case of petitioner in IA, 419/2022:

3. The petitioner is the 2<sup>nd</sup> defendant, the respondents are the plaintiff and 1<sup>st</sup> defendant in the original suit. The plaintiff has filed the suit for the relief of declaration and injunction against the defendants. The petitioner herein is contesting the suit and has filed the written statement also. The plaintiff side evidence being PW1 was examined in chief and the suit was posted for cross of PW1 by 2<sup>nd</sup> defendant on 11/03/2022. On 9/3/2022, the petitioner herein has suffered from high fever and could not go anywhere and further has taken the home remedies for the same. Therefore, the petitioner herein could not be able to give appropriate information about the case to the counsel and also the petitioner was not able to attend the court on that day. The act of the petitioner is neither willful nor wanton. The petitioner came to know about the close of PW1 evidence recently and therefore the petitioner has come up with this petition to cross examine the PW1 which was closed on 11/3/2022. Therefore, the petitioner has

come up with this petition to recall PW1 so as to cross-examine by 2<sup>nd</sup> defendant. If this petition is not allowed, the petitioner will be put to irreparable loss and injury. Hence, this petition.

The case of the Respondent in 419/2022:

4. The respondents vehemently oppose the petition filed by the petitioner and liable to be dismissed. This court has given sufficient opportunities to the defendant to cross-examine the PW1 witness. But the petitioner has turned down and therefore this court has closed the PW1 evidence on 11/3/2022 and on that day, the petitioner was also present in the court. The petitioner does not have a strong case to prove on his side and therefore has filed this petition to drag on the suit proceedings. Therefore, the respondent prays for the dismissal of this petition with cost.

5. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

6. On the side of both parties, no oral and documentary evidence was let in.

Points for consideration:

7. Heard both sides learned counsels. Material records perused. These petitions are filed under Section 151 of CPC to reopen the evidence of PW1 and under Order 18 Rule 17 of CPC to recall the PW1 so as to cross-examine by 2<sup>nd</sup> defendant. The suit is filed for the relief of declaration and other consequential reliefs. On perusal of records, it is seen that the suit is posted for trial on 20.1.2017 and PW1 was examined in chief on 15/4/2021 and the matter was posted for cross-examination of PW1. The PW1 was present for cross examination by defendant side on 10 different dates, but the defendant has turned down. With these circumstances, the 2<sup>nd</sup> defendant filed petition in I.A.NO. 235/2022 to reopen the PW1 evidence so as to cross-examine PW1. Subsequently, the petitioner has also filed I.A.NO.419/2022 to recall PW1. Furthermore, there is an order of simultaneous trial of this suit along with OS.NO. 156/2015 pending on the file of this court.

8. On perusal of records, it is seen that the suit pertains to the year 2016 and the suit is in the stage of Plaintiff side further evidence only. Despite of providing sufficient opportunities to the defendant counsel, cross examination of the PW1 was not done by 2<sup>nd</sup> defendant. It is also to be noted that the trial court must give the maximum opportunities to the parties to put forth their case in toto. Therefore in order to render substantial justice and for complete adjudication of the suit, this court is inclined to allow this petition. On the other hand, it is also to be seen that the defendant is deliberate in contesting the suit and seeking the time without any due cause and prolonging the suit. Therefore, this court is of the view that this is the fit petition to impose costs. Furthermore, the suit is in the stage of Plaintiff side further evidence only. While being so, it is just and enough if the petition is filed to recall PW1 alone. Therefore, this court is inclined to close the petition is 235/2022.

**Result in IA.No. 235/2022**

In the result, this petition is closed.

**Result in IA. No.419/2022**

In the result, this petition is allowed on payment of cost of Rs.300/- to the 1<sup>st</sup> respondent on or before 17.11.2022. Failing which, this petition stands dismissed automatically. Call on 17.11.2022.

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 26<sup>th</sup> day of October 2022.

(Sd/-S.Suganiyasri)

Additional District Munsif,  
Chidambaram.

**List of witnesses and documents on the side of the petitioners:**

NIL

**List of witnesses and documents on the side of the respondents:**

NIL

(Sd/-S.Suganiyasri)

Additional District Munsif,  
Chidambaram.