

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

**PRESENT: Tmt. V. Devapriya, B.Sc.,M.L.,
District Munsif, Madurantakam**

Tuesday, the 20th day of June, 2023

I.A.No. 11/2023 and I.A.No. 12/2023

in

O.S. No. 50/2021

Velayutham

...Petitioner/ Defendant

-vs-

Dasarathan

... Respondent/Plaintiff

These petitions coming up before me on 08.06.2023 for final hearing in the presence of, Thiruvalargal.K.Thilagaraj, K.Idayaraj, Counsels for the Petitioner/ Defendant and Thiruvalaragal.K.Ayyasamy, S.Senthil Kumaran and S.Jothi, Counsels for the Respondent/Plaintiff and after hearing the arguments of both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

COMMON ORDER

I.A.No.11/2023:

This petition has been filed by the Petitioner/Defendant under Order XVIII Rule 17 of Code of Civil Procedure, to re-call the PW-1 and PW-2 for cross examination in the above case.

I.A.No.12/2023:

This petition has been filed by the Petitioner/Defendant under section 151 of Code of Civil Procedure, to re-open the evidence on the Plaintiff's side.

2. The averments stated in the petitions in brief:

The above suit is posted for argument. The counsel for the Petitioner/Defendant was admitted in hospital for past one month and therefore he could not cross examine the PW-1 and PW-2. Thereafter the above suit was posted for Defendant's side evidence and the Defendant's side evidence was also closed and the suit was posted for argument. The Petitioner/Defendant has got good case on merits and it is necessary to cross examine the PW-1 and PW-2 to prove his case. Hence these petitions.

3. The averments stated in the Counter filed by the Respondent/ Plaintiff in brief:

These petitions are not maintainable under law and on facts. The Respondent/ Plaintiff was examined as PW-1 and the case was posted for cross examination of PW-1 on various dates for about 2 months. Since there was no representations on behalf of Petitioner/Defendant and since the Petitioner/Defendant was also not present before this court, the cross examination of PW-1 was closed on 04.11.2022 and the case was posted for further evidence on Plaintiff's side.

4. Thereafter one Manjan, was examined as PW-2 and again the case was posted for cross examination of PW-2 and it was in the same stage for about 2 months. Since the Petitioner/Defendant and his counsel was not present in the court, the cross examination of PW-2 was closed on 19.01.2023 and the above suit was posted for Defendant's side evidence. Even after giving sufficient opportunities for nearly one month, the

Petitioner/Defendant has not taken any evidence and therefore the Defendant's side evidence was closed on 27.02.2023 and the case was posted for arguments. Thereafter, only on 29.03.2023, after lapse of one month, the Petitioner/Defendant had filed this present petition with false allegations. The Petitioner/Defendant had dragged PW-1 and PW-2 to the court for cross examination on several days. The Petitioner/Defendant had willfully failed to cross examine of PW-1 and PW-2 and had failed to adduce evidence on their side. The Petitioner/Plaintiff had not given any bonafide reasons for non-appearance of his counsel.

5. The Petitioner/Defendant had filed this petition with false allegations only to harass the Respondent/Plaintiff. The Petitioner/Plaintiff had not come to court with clean hands and he is not entitled to any relief. The Petitioner/Defendant had not stated any specific date and the name of hospital and the reason, why the counsel was admitted in the hospital. The Petitioner/Defendant had not produced any documents and there is no merits in these petitions. Hence these petitions are liable to be dismissed with costs.

6. The point for determination is whether these petitions are to be allowed or not?

7. No Exhibits marked and no witnesses were examined on both sides

8. Heard both sides and perused the records.

9. The Petitioner/Defendant had filed these petitions to re-open Respondent/Plaintiff's side evidence and to re-call PW-1 and PW-2 for cross examination on the ground of his

counsel's illness. The Respondent /Plaintiff had resisted the petition stating that, the Petitioner/ Defendant had filed this petition to drag on the proceedings without availing the opportunities given to him and he had filed this petition without bonafide reasons.

10. Perusal of records reveal that, sufficient opportunities has been given to the Petitioner/ Defendant to cross examine of PW-1 and PW-2. But the Petitioner/ Defendant had failed to cross examine PW-1 and PW-2. The Petitioner/ Defendant had stated that, his counsel was admitted in the hospital for about one month and therefore he could not cross examine the PW-1 and PW-2. Since this is a trial court, in which the facts has to be adjudicated, by giving every opportunities to the parties, this court is of the opinion that this petition has to be allowed for complete adjudication and to avoid multiplicity of litigations. The Respondent/Plaintiff had not stated any fact with regard to the prejudice being caused to him. Hence for the foregoing reasons, this court is inclined to allow these petitions on costs and conditions.

11. I.A. No. 11/2023. In the result, this petition is allowed on costs of Rs.500/- to be paid by the Petitioner/ Defendant to the PW-1 and PW-2 each on or before 27.06.2023, failing which, this petition will be dismissed automatically and on condition that the Petitioner/Defendant shall cross examine PW-1 and PW-2 on the same day, they appear before this court, for cross examination. Call on 27.06.2023.

I.A. No. 12/2023. In the result, this petition is allowed on costs of Rs.1,000/- to be paid by the Petitioner/ Defendant to the Respondent/Plaintiff on or before 27.06.2023, failing which, this petition will be dismissed automatically. Call on 27.06.2023.

Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 20th day of June, 2023

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

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