

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**
PG.D.PM/IR.,
ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Tuesday, the 1st Day of October 2024

E.A. No.5/2024

-in-

E.A. No.2/2022

in

E.P. No.57/2021

in

MACOP No.341/1999

The Branch Manager, National Insurance Company Ltd.,

... Petitioner / 2nd Respondent

-Vs-

1.Malliga (died)

2.Nagammal (died)

3.Manimuthu

4.Sekar

5.Vanathai

... Respondents / Petitioners

This petition came on 23.09.2024 before this Court for hearing in the presence of Thiru.A.M.Abdul Kareem, Advocate for the Petitioner / 2nd Respondent. Thiru.N.Prithiviraj, Advocate for the Respondents / petitioners and heard the arguments on petitioner side and on perusal of records, this Court delivers the following

ORDER

This petition is filed by the Petitioner / 2nd Respondent Under Order 18, Rule 17 and Sec.151 of C.P.C.

2. Contention of the Petitioner in brief:

The petitioner is the 2nd respondent in the Main E.P. and has filed the petition in E.A.No.2/2022 u/s.47 CPC. P.W.1 was examined on behalf of the petitioner and he was cross examined and E.A.No.2/2022 was posted for further evidence of the petitioners. Now, this petitioner states that he has received important documents only now and they are necessary to establish their case and have to be marked on their side. Hence, the petitioner has prayed to recall P.W.1 and receive the additional proof affidavit filed by him and to mark the said documents. So he prays to allow the petition accordingly.

Contention of the Respondents in brief:

3. The respondents have stated that the reason stated in the petition is not acceptable and this application is filed after cross examination of PW1 so as to fill up the lacuna created in the cross examination. Hence, the petition is

not maintainable. The petitioner has not given the details of the documents that are to be now marked by him. Therefore, they pray to dismiss the petition with cost.

4. The point for determination in this petition is “ **Whether the petition be allowed ?**”

5. No oral or documentary evidence was let in by either party.

Answer to the Point :

6. Admittedly, this petitioner has filed E.A.No.2/2022 u/s.47 of CPC stating that the Award cannot be executed and the E.P. has to be dismissed. In the said petition, though initially no evidence was let in and the case was posted for arguments, the petitioner represented that since that was an application u/s.47 of CPC, he has to be let in evidence. Therefore, PW1 was examined and also cross examined, since no endorsement was made by the petitioner stating that he has no oral evidence. After PW1 was cross examined and the case was posted for further evidence of the petitioner, the Petitioner Company has filed this application to recall PW1 claiming that it has to file certain documents which are important to establish their case. The objection raised by the respondents that this petition is filed to fill up the

lacuna after PW1 was cross examined, though are valid, the interest of justice warrants that the petition be allowed and the petitioner be given an opportunity to file the additional documents which are received by him only now. However, the respondents would get an opportunity to cross examine PW1 if he was recalled and examined. No serious prejudice would be caused to the respondents.

However, hardships caused to the respondents shall be compensated by way of cost and it is held that the petition will be allowed on payment of cost of R.1,000/- to the respondents on or before 14.10.2024. This point is answered accordingly.

In the result, this petition will be allowed on payment of cost of R.1,000/- to the respondents on or before 14.10.2024. Failing which the petition shall stand dismissed. Call on 15.10.2024.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in Open Court on this the 1st day of October 2024.

Additional District Judge,
Dindigul.