

**IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,
TIRUPPUR**

Present:- Tmt. M.Mekala Mythili, B.A.,B.L.(TN 01541)
Additional Subordinate Judge,
Tiruppur.

Wednesday the 5th day of April 2023

I.A.7/2023

in

O.S.No.250/2017

1.G.Kasthuri

2.V.Govindaraj

Petitioners/ Defendants

//vs//

1.S.Renukadevi

2.Mr.R.Loganathan

3. M/S Bloom Knit Finisher

4. The State Bank of India,SME Branch,Tirupur.

5. The Commissioner Sales Tax Department,Tirupur Branch

....Respondents/Plaintiffs

This petition coming on 03.03.2023 for final hearing before me in the presence of Thiru.D.Dinesh Kumar,B.A.,B.L.,Advocate for the petitioner and Thiru.K.N.Vishnunathan,M.Com.,B.L., for the respondents and upon perusing the petition, Counter statement, other connected

material papers of records, hearing the both side arguments and having stood over till this day for consideration, this court made the following

ORDER

This application is filed under Order 6 Rule 1 CPC to permit the petitioner to examine the witness.

2. The Brief averments of the petition

The petitioner is the 2nd defendant in the suit. The petitioner have filed the written statement in the suit. The 1st respondent/plaintiff joining hands with the 2nd respondent/plaintiff had not maintained proper accounts pertaining to the partnership firm and has diverted, misused and misappropriated the money of the partnership firm which had caused loss to the partnership firm and due to that, the petitioner and his wife gave a complaint against respondents and criminal proceedings are pending against respondents and those documents are very much necessary to decide this suit. At the time of filing the written statement in this case and plaintiff filed in OS No.470/2018 and the petitioner was duly instructed to the counsel with list of witnesses and documents annexed in this petition and the petitioner was not able to produce the list of witnesses at the time of filing the written statement in the urgent and immediate necessity after framing issues due to illness. Now the petitioner annexed the list of witnesses in the petition which is material and very much necessary and essential to decide the suit. The delay caused in filing the list of witnesses are neither wanton nor negligence but only due to the bonafide reasons . Hence the petition.

3. The counter statement filed by the Respondent

The petition is frivolous, false, vexatious and not maintainable either in law or on facts. The respondent denies all the allegations mentioned in the affidavit those that are specifically admitted and the petitioner is put to strict proof of the same. The 1st respondent/plaintiff joining hands with the 2nd respondent/ plaintiff had not maintained proper accounts of the partnership firm and has diverted / misused and misappropriated the money of the partnership firm which had caused loss to the partnership firm is vague. The petitioners have not mentioned or described the documents upon which evidence is required and what for the witness mentioned in the annexed petitioner to be summoned for adducing evidence. Nowhere in the written statement filed by the petitioners/defendants 1 and 2 in O.S.No.250/2017 have pleaded that the 3rd respondent firm had transaction with Punjab National Bank, Vaalipalayam Branch, 8th Bhawathi Street, Tirupur. The petitioners /defendants 1 and 2 in O.S.No.250/2017 have not taken any plea about the transaction with Punjab National Bank, by the 3rd defendant firm in the suit, the petitioner have no locus-standi to seek permission to summon the Manager Punjab National Bank as their witness. Mere summoning of witnesses would not give any fruitful result to decide the suit. Hence the respondents prayed to dismiss the petition with costs.

3. Both side arguments heard. Both sides have not adduced any witness or documentary evidence.

4. The point for consideration is ‘whether the application is allowed or not?’

5. Records perused On perusal of records, it is noticed that on the petitioner side it is contended that the petitioners are defendants in the suit and also filed in O.S.No.470/2018. During the time of filing written statement and in filing suit in O.S.No.470/18, the defendants are unable to file the list of witnesses. Hence the delay is to be condoned.

On perusal of records, it is noticed that the petitioners are defendants in the suit. The respondent / plaintiff have filed suit in OS.No.250/2017 for dissolving the partnership and also rendering accounts of the partnership firm. This petitioners also filed suit in OS.No.470/2018 for direction of producing the account details. By way of this application the petitioner want to examine the State Bank Manager.

On the defendant side, after completion of examination of the 2nd defendant, the suit is posted for examination of further witnesses on the defendant side. It is contended that even though the Manager of State Bank of India and the Commissioner of In-come tax department have been arrayed as parties to establish the defense, they have to examined on witnesses. It is prayed to condone the delay in filing the list of witnesses. After framing of issues, two weeks time given to the parties to produce the documents and also furnish the list of witnesses. The suit is at part heard stage and this court is of view that an opportunity could be given to the parties to establish their defense by examining the witness and also by producing the documents. Hence in the interest of justice and to provide an opportunity to the petitioners, this court is inclined to allow this application.

In the result, this application is allowed. Both the parties are ordered to bear their respective costs.

Dictated to Steno-Typist, directly and typed by her in computer and corrected & pronounced by me in open Court, on this 5th day of April 2023.

(s/d) M.Mekala Mythili

Additional Subordinate Judge,
Tiruppur.

Both side witnesses and documents

Nil

/ True copy /

Fair/Draft order
I.A.No 7/2023
in O.S.No.250/2017
Date : 05.04.2023

Id

ASJ.,Tpr.

