

**IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
TIRUCHIRAPPALLI**

**Present : Thiru B.Saravanan, B.Sc., B.L.,
II Additional District Judge, Tiruchirappalli**

Monday, the 01st day of July 2024

**Interlocutory Application Nos.4/2023, 5/2023 and 6/2023
in
Original Suit No.239/2018**

Thilagavathy,
W/o.Thangavelu,
Door No.6-1/D18,
6th Cross, West Extension,
Thillai Nagar,
Tiruchirappalli District

... Petitioner/Defendant

Vs

Parimaladevi,
W/o.Duraisamy,
Door No.8A, Neethukara Street,
Trichy Town, Tiruchirappalli District.
Represented by her power Agent
Meenakumari,
W/o.Duraisamy,
Door No.8, Neethukara Street,
Trichy Town, Tiruchirappalli District.

... Respondent/Plaintiff

These petitions came up before me on 20.06.2024 for final hearing in the presence of Thiru. T.A Punithan, counsel appearing for the Petitioner/ Defendant and of Thiru P.Kanagaraja, counsel appearing for the Respondent / Plaintiff and upon perusing the petitions, affidavits, counters and documents on record and

upon hearing the arguments of both side, having stood over the consideration till this day, this court delivers the following,

COMMON ORDER

1) I.A.No.4/2023 - The petitioner/ defendant has filed this petition under Section 151 of Civil Procedure Code, seeking permission to re-open the case.

2) I.A. No.5/2023 - The petitioner/plaintiff has filed this petition under Order 18 Rule 17 of Civil Procedure Code seeking permission to recall P.W.1 for further cross examination on his side.

3) I.A. No.6/2023 - The petitioner/plaintiff has filed this petition under Order 8 Rule 1(3) of Civil Procedure Code seeking permission to receive the additional documents mentioned in the petition and to permit to mark the same, on his side.

4) All the above stated three petitions are inter connected, hence they are tried together and decided by way of this common order.

5) The learned counsel appearing for the Petitioner/Defendant in these petitions would submit that the respondent/plaintiff has filed the suit for the relief of refund of the advance amount paid in pursuance of the sale agreement and for incidental reliefs and when the case was posted for defendant side evidence on 15.03.2023 and on that day, she was not in good health and unable to appear to give evidence before this court, hence this court has closed her side evidence and

posted for arguments, the non examination of the witness is neither will-full nor wanton.

6) He further submitted that the important documents were not available earlier and traced by the petitioner now only and submitted that these documents are vital to prove her case, if these petitions are not allowed, she will be put to irreparable loss and hardship. Hence, he prays to allow these petitions.

7) Per Contra, the learned counsel appearing for the respondent/plaintiff has submitted that the petitions are not maintainable and the petitioner has not stated proper reasons and the matter was already posted for defendant's evidence, since she plead discharge hence the respondent has already submitted that before the commencement of the plaintiff side evidence, the defendant has to adduce her side evidence, but she did not avail the opportunity, hence, this court has directed the plaintiff to adduce her side evidence and the plaintiff side evidence was already recorded, the documents sought to be produced were forged and concocted belatedly, the petitioner/defendant has filed so many applications to drag on the proceedings and prayed that these petitions may be dismissed.

8) Heard both side and perused the records.

9) The respondent/plaintiff has filed the suit for the relief of refund of the advance amount based on the suit sale agreement. It is stated by the respondent/plaintiff that she has already submitted that before commencement

of the plaintiff side evidence, the defendant has to adduce her side evidence. But no petition was filed who has to begin the trial first. Anyhow, already plaintiff side evidence was over. So far, the petitioner/ defendant has not adduced her side evidence. Along with the petition to receive additional documents the following documents are filed by the petitioner/defendant.

“ Cheque for Rs.2,50,000/- stated to be issued in favour of the plaintiff on 22.02.2016 and Receipts stated to be given by the plaintiff to the defendant on various dates”

10) The truth, validity of those documents cannot be decided in these petitions. The same can be decided only at the time of final disposal of the suit. It is stated in these petitions that when the case was posted for defendant side evidence on 15.03.2023 and on that day, she was not in good health and unable to appear to give evidence before this court. The said reason is acceptable one. Further , during trial, if the parties are not given sufficient opportunity to adduce oral and documentary evidence to prove their case, they will put to irreparable loss and hardship. On the other hand, the respondent/plaintiff can be compensated by way of cost. Hence considering the reasons stated in the petitions, this petition is liable to be allowed subject to the following conditions.

11) In fine,

a) All the three petitions will be allowed on payment of cost of Rs.1,000/- each total cost of **Rs. 3,000/-** (Rupees Three thousand only) to be paid

to Respondent/Plaintiff directly, by the Petitioner/Defendant on or before 08.07.2024, failing which, these three petitions shall stand dismissed automatically.

b) If the cost ordered as above is paid within the above period by the petitioner/defendant, the documents filed along with IA No.6/2023 will be received and they will be marked on the side of the defendant, subject to the objection raised by the respondent/plaintiff side. It is made clear that proof and relevancy of the same will be decided, at the time of final disposal. Further, if necessary, the respondent /plaintiff can adduce rebuttal evidence, after closure of the evidence of the defendant side.

c) For compliance of conditional order call on **08.07.2024**.

Dictated to the Stenographer, typed by her directly in the Computer, corrected and pronounced by me in the open court, this the 01st day of July 2024.

**II Additional District Judge,
Tiruchirappalli.**

List of documents and witnesses on both side: Nil.

**II Additional District Judge,
Tiruchirappalli.**