

IN THE COURT OF THE DISTRICT MUNSIF, THIRUVOTTRIYUR
THIRUVALLUR DISTRICT.

Present: Selvi. K. Malarkodi, B.A.,B.L.,
District Munsif,
Thiruvottriyur

Friday, this the 28th day of June 2024

I.A. 6 of 2023 in OS.No.78/2018

Karunakaran

...Petitioner/Defendant

//Vs//

Govindaraj

....Respondent/Plaintiff

This petition came up on 24.06.2024 for final hearing before me in the presence of M/s.R.Gopalakrishnan and N.Vivek, Advocates for Petitioner/Defendant and Thiru.T.Baskaran Advocate for the Respondent/Plaintiff upon hearing enquiry on both sides and having stood over for consideration till this date, this court made the following:

ORDER

This petition is filed by the Petitioner/Defendant under section 151 of cpc to reopen the Defendant's side evidence in the above suit.

2. Brief averments of the petition/affidavit filed by the petitioner/defendant in short are as follows:

The petitioner stated that he is the petitioner herein and defendant in the above suit and well acquainted with the facts of the case. The petitioner stated that the suit is filed for the recovery of money by respondent/plaintiff and other reliefs. Further stated that the petitioner wants to examine one Uma Shankar who is the family friend of him, who knows about the entire facts of the case and also the damages done by the respondent to his house. Further, stated that the said Uma Shankar was along with him in the Police station and also try to conciliate the dispute between the petitioner and the respondent. So he wants to examine him as his side evidence. Further, stated that when the suit is posted for further defendant's side evidence the Uma Shankar was out of station therefore he is not able to produce him before this court as his side evidence. Due to the non production of evidence this court closed the evidence of the petitioner/defendant side. The non appearance of the evidence is neither willful nor wanton. Therefore this petition is filed to reopen the evidence of defendant side. If this petition is not allowed the petitioner will be put to irreparable loss. Hence, this court may be pleased to allow the petition to reopen the defendant side evidence and render justice. Hence, this petition.

3. Brief averments of counter filed by the Respondent/Plaintiff in short are as follows:

The respondent stated that he was the respondent in the above petition and the plaintiff in the above suit. The respondent has filed the above suit directing the defendant to pay a sum of Rs.50,000/- with interest at 12% per annum from the date of plaint till the date of realization. He was a tenant under the defendant and after he vacated his premises the defendant refused to return the advance. So he filed the above suit for the same. The case was posted for the defendant's further evidence on 18.07.2022. The defendant took time from 18.07.2022 till 13.10.2022 for further evidence and did not examine any witness and only tried to protract the case. On 13.10.2022 this Court was pleased to close the evidence of the defendant as the defendant did not examine any further evidence even after grant of sufficient time. The petitioner/defendant has now come up with the present application to reopen the defendant's evidence after 704 days. Further the respondent stated that no sufficient reasons have been stated in the affidavit for the delay of 704 days in filing an application to examine one Uma Shankar who is a close friend of the petitioner. Hence this petition is liable to be dismissed with cost.

4. Now the point for consideration is whether this petition under section 151 of cpc to reopen the Defendant's side evidence in the above suit has to be allowed or not?

5. Heard on both sides.

6. The petition, counter and other materials available on records were carefully perused. Both sides have not examined any witness and have not marked any Exhibits and documents.

7. Admittedly, the suit is filed for the relief of recovery of money by the respondent/plaintiff. According to the petitioner/defendant, on his side that he has been examined as DW1 and cross examined in full, another witness was examined as DW2 and cross examined in full and the case was posted for further Dws . He wants to examine his close friend by name Uma Shankar who knows the entire facts of the case. But unfortunately when the suit was posted for further Dws the said Uma Shankar was out of station therefore he was unable to produce him before this court as his side evidence. Due to non production of the evidence this court closed his evidence. Now it is just and necessary the case has to be reopened for his side evidence for further witness.

8. Per contra, the respondent contended that only to drag on the proceedings the present petition was filed without any merits. Further, contended that on 13.10.2022 the Court was posted for the defendant side witness as finally but the defendant side witness not produced, so this court closed the defendant side evidence now only to drag on the proceedings the present petition was filed without any merits

9. On perusal of records, it is seen that the DW1 was examined on 28.11.2019 and cross examined in full another witness was examined on 17.03.2021 and cross examined in full. And this court posted for further Dws from 18.07.2022 to 13.10.2022. Even though sufficient opportunity was given to the petitioner/defendant he did not come forward to produce further evidence on his side. Therefore this Court closed the defendant side evidence and posted for arguments. At this juncture, the petitioner/defendant has come forward with this petition to reopen his side evidence for further witness.

10. Considering the facts and circumstances of the case, this court feels that, the petitioner has to be given sufficient opportunity to put forth his case to meet the ends of the justice. No prejudice will be caused to the respondent by way of allowing this application.

In the result, the petition is ordered to be allowed on payment of cost of Rs.300/- to be paid by the petitioner to the respondent on or before 04.07.2024 failing which the petition shall stand dismissed. Call on 08.07.2024.

Dictated directly to the steno-typist, typed by her in the computer, corrected and pronounced by me in open court, this the 28th day of June 2024.

District Munsif,
Thiruvottriyur.

List of exhibits and witnesses on both sides: NIL

District Munsif,
Thiruvottriyur.