

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

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

Friday, this the 19<sup>th</sup> day of July 2024

**M.P.No.19 of 2021**

**in**

**RCOP.No.15/2016**

1.K.Jayapaul (died)  
2.K.Jayachandran  
3.Umamaheswari  
4.Tamilselvi  
5.Ezhilarasu  
6.Anjugam  
7.Chandra Mohan

...Petitioners/Petitioners

//Vs//

C.Selvam

....Respondent/ Respondent

This petition came up on 15.07.2024 for final hearing before me in the presence of M/s.B.Murugavel and M.R.Arulmozhi, Advocates for Petitioners/Petitioners and M/s.K.G.Raghunath, N.Senthil Kumar, and R.Vijayalakshmi Advocates for the Respondent/Respondent 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 Petitioners under order 18 rule 17 of CPC to recall RW1 for cross examination in the above petition.

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

The petitioner stated that he is the petitioner and the 2<sup>nd</sup> petitioner in the main RCOP. He stated that the above petition is posted to 01.03.2021 for cross examination of the respondent. On the last week of the February 2021 he met with an accident due to which his foot bones got fracture and he could not come to court to give instruction for the cross examination of the respondent. On 01.03.2021 petitioner side cross examination was closed and posted for further respondent's side evidence. The non appearance before this court on 01.03.2021 is neither willful nor wanton and had happened only due to the above said circumstances only. Hence it is just and necessary to recall the RW1 for cross examination in the above case for effective adjudication otherwise they will be put to much hardship and inconvenience. Hence this petition.

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

The respondent stated that the above petition is not maintainable either in law or on facts. The reason given in the above petition to recall of RW1 is unsustainable

and against law. There is no proof or evidence produced before this court to sustainable their stand. Further, the respondent stated that there were several hearings and sufficient opportunity was given to the petitioners to cross examine the RW1, by this court. On contra, the petitioners wantonly neglected further respectfully submits that on 08.01.2021 the RW1 present, but the petitioners counsel was not ready for the cross examination, therefore this court was passed conditional order to the petitioners to pay a sum of Rs.200/- to the RW1 and again the above case adjourned to 19.01.2021 for further cross examination of RW1. Even after conditional order passed by this court, but the petitioner counsel had not come forward for cross examination and they took more than three months, for that reason the RW1 cross continuation has been closed on 01.03.2021 by this court. Further, the petitioner has not stated any valid reason for recall and not made out any sufficient reason for recall of RW1. Hence this petition is liable to be dismissed.

4. Now, the point for consideration is whether the petition filed Under Order 18 Rule 17 of CPC has to be allowed or not?

5. 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.

6. Materials perused. Heard on both sides.

7. Admittedly, the main RCOP is filed for eviction on the ground of wilful default, demolition and reconstruction and own use and occupation. According to the petitioners the main RCOP was posted on 01.03.2021. In the last of February 2021 he met with an accident therefore he is unable to give instructions to his counsel, consequently the cross of RW1 was closed by this court. Therefore, he filed this petition to recall the RW1 for cross examination.

8. Per contra, the respondent contended that this court had given sufficient opportunities to the petitioner to cross examine the RW1 but the petitioner did not come forward to cross examine the RW1 even though cost was imposed on the petitioner for non-cross examination on 08.01.2021. Hence this petition is filed only to drag on the proceedings and liable to be dismissed.

9. On perusal of records, it is seen that on 08.01.2021 the case was posted for cross of RW1 but the petitioner was not ready to cross examine the RW1. Therefore this court imposed a day cost of Rs.200/- payable by the petitioner to the respondent and posted the case on 19.01.2021. On that day, the cost was paid by the petitioner but the RW1 was not present. Therefore this court posted the case for cross of RW1 on 22.02.2021, since there was no representation on both sides this court posted the case on 01.03.2021 for cross examination of RW1. But the petitioner was not ready to cross

examine the RW1. Therefore this court closed the cross examination of RW1 and posted for further RWs. At this juncture the petitioners have come forward with this petition to recall the RW1 for cross examination. The respondent strongly objected the petition filed by the petitioners.

10. However, this court feels that, the petitioners have to be given sufficient opportunity to put forth their 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, this petition is ordered to be allowed on cost of Rs.750/- to be paid by the petitioners to the respondent on or before 26.07.2024, failing which this petition shall stand dismissed. Call on 29.07.2024.**

Dictated directly to the steno-typist, typed by her in the computer, corrected and pronounced by me in open court this the 19<sup>th</sup> day of July 2024.

District Munsif,  
Thiruvottriyur

**List of witnesses and exhibits on both sides:- NIL**

District Munsif,  
Thiruvottriyur