

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
THOOTHUKUDI.

Present : Tmt. M. Breetha, M.L.,
II Additional District Judge,
Thoothukudi.

Friday, this the 10th day of January 2025

I.A. No. 4/2024

in

O.S. No. 8/2023

Krishnammal

... Petitioner / Plaintiff

/ versus /

1) Kanagalakshmi

2) Poonkani

3) Amutha

4) M/s. Five Star Business Finance Ltd.

Represented by Authorised Officer

... Respondents / Defendants

This petition is coming before me for final hearing on 20.12.2024 in presence of Thiru.N.Vel Rajesh, Learned Advocate for Petitioner/Plaintiff and Thiru.D.Ramasubramanian, Learned Advocate for 1 to 3 Respondents and Thiru.B.Pon Esakki, Learned Advocate for 4th Respondent and upon hearing both side arguments and on perusal of records and having stood over till this day for consideration of this court, this court delivers the following:

ORDER

This Petition has been filed Under Section 151 of C.P.C to eschew the evidence of PW1.

2) The Brief averments of the petition:

The petitioner is the plaintiff in the main suit and has averred that in the main suit, the petitioner herein was examined as PW1 in chief on 19.09.2024 by way of

filing proof affidavit and the case stood posted for her cross examination and that as the petitioner is suffering from joint pain and couldn't walk, she could not appear before the court to subject herself for cross examination and that in the above said circumstances, the earlier proof affidavit of PW1 has to be eschewed and that in eschewing the evidence of PW1, no prejudice would be caused to the other side and that irreparable loss would be caused to the petitioner, if this petition is not allowed and prays to allow the same.

3) **The contentions of the counter filed by the 4th respondent:**

The respondent has denied all the averments made in the petition and has contended that the reasons stated in the petition are not correct and that on examination of PW1, true facts of the case could be elucidated and that the petitioner has come forward with this petition to drag on the proceedings of the case and to cause hardships and prays for dismissal of the petition with costs.

4) The counsel for the respondents 1 to 3 endorsed that "No counter for D1 to D3".

5) The point for consideration is whether this petition is to be allowed or not?

6) Both sides are heard. Records have been perused.

7) The petitioner is the plaintiff. In the main suit, the petitioner herein has been examined in chief by way of filing proof affidavit on 19.09.2024. The case stood posted for cross examination of PW1. At this juncture, the petitioner has come forward with this petition to eschew her evidence stating that she is aged person and is suffering from severe knee pain and is under treatment. The respondent has contended that PW1 has come forward with this petition to subject herself for cross examination to conceal the truth. Though the chief examination of PW1 has been

recorded, she has not been subjected for cross examination. Without subjecting to cross examination, the chief examination does not have any evidentiary value and is non est in the eye of law. The petitioner has averred that PW1 is not in a good health condition to subject herself for cross examination. In the above said circumstances, retaining the chief examination of PW1 without examination would serve no purpose. Further, no serious objections have been raised by the respondent to disallow the claim of the petitioner.

8) Therefore, for the above said reasons and in the interest of justice, this court is of the view that it is just and necessary to allow this petition.

In the result, this petition stands allowed. No costs.

Dictated to the Steno-typist, typed by her, corrected and pronounced by me in open Court, this the 10th day of January, 2025.

Sd./M. Breetha,
II Additional District Judge,
Thoothukudi.

Draft/Fair Order
I.A. No. 4/2024
in
O.S. No. 8/2023
Dated: 10.01.2025