

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE, VELLORE DISTRICT.

PRESENT: Tmt.P.Revathy, M.A.,M.L.,
Additional District Judge(FTC),Vellore.

Dated this the 12th day of June 2023, Monday.

I.A.NO.3/2023 in
O.S.NO.54/2016

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1. Abrar Ahamed
2. Yasmeen
3. Asfiya
4. Farooque Ahmed (died)

..Petitioners/Defendants

//Vs//

1. Shamshad Begum
2. Hajira Nasreen

..1st Respondent/Plaintiff

..2nd Respondent/2nd defendant

This petition was filed before this court and coming before me on 08.06.2023 for final hearing in the presence of Thiru.S.Babu, counsel for the Petitioners and of Thiru.K.Umar, counsel for the 1st respondent and notice to the 2nd respondent dispensed with on petition and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following:-

ORDER

Petition filed by the petitioners under Order 18, Rule 17 and Sec.151 of CPC, prays to recall P.W.1 for further cross examination in the suit.

2.The averments of the affidavit is as follows:-

The 1st petitioner herein is the 1st defendant in the main suit. The other petitioners are defendants 3 to 5 and he filed this affidavit on behalf of other petitioners also. The main suit was posted to 10.03.2023 for cross examination of P.W.1. The petitioner also preplanned to appear in person on that date. But on 09.03.2023 his pregnant daughter, Aasiya Fathima, unexpectedly developed labour pain and required immediate hospitalization. Hence he rushed to Hospital accompanying her and had to remain there the next day as well, i.e., on 10.03.2023 when she gave birth to a baby. In this rush and unavoidable situation, unable to attend the court due to his personal inconvenience. It is very much essential to cross examine the P.W.1 to find out and recognize certain facts and circumstances. Hence the P.W.1 needs to be recalled for further cross examination. Hence the petitioners filed this petition and prays to allow the petition.

3. Brief averments of the counter filed by the 1st respondent is as follows:-

This petition is not maintainable either in law or on facts. All the affidavit averments are denied except those that are admitted by the respondent herein. The petitioners had suppressed the material facts that the petitioners have not chosen to cross examine the P.W.1, despite providing many opportunity. Materially chief was filed on 21.12.2022 and then on request of petitioners side matter adjourned to 04.01.2023, 11.01.2023,

25.01.2023, 01.02.2023, 10.02.2023, 17.02.2023, 24.02.2023, 03.03.2023 and 10.03.2023. Finding that the cross examination was not completed even though 10 hearings were given the Hon'ble Court was pleased to close the evidence of P.W.1. Further the suit proceeded on 17.03.2023; 24.03.2023, 30.03.2023, 06.04.2023, 13.04.2023 and 20.04.2023. Only on 20.04.2023 that is after exhausting five hearing dates the petitioners had chosen to file the present petition and as the petition is liable to be rejected in limini. The petitioners had not shown any reason for not cross examining the P.W.1 since 21.12.2022 despite providing 9 adjournments. On this ground alone the petition is liable to be dismissed. This respondent is a senior citizen is struggling a lot in attending the court repeatedly and as such also the petitioners petition is liable to be rejected. Hence the respondent prays to dismiss the petition.

4. The point for consideration in this petition is;

Whether the petition is to be allowed or not?

5. Point:

The petitioner has stated that on 09.03.2023, his daughter Aasiya Fathima was admitted in Hospital and due to unavoidable situaion, he accompanied her daughter in the hospital and hence he could not attend the court on 10.03.2023, the absence of the petitioner is neither willful nor wanton, but due to his personal inconvenience. Hence he may be recalled for cross examination.

But the 1st respondent denied the allegations and stated that, petitioner had not chosen to appear for cross examination, despite of many opportunities provided to him, the case was adjourned from 04.01.2023, 11.01.2023, 25.01.2023, 01.02.2023, 10.02.2023, 17.02.2023, 24.02.2023, 03.03.2023 and 10.03.2023 and all the adjournments were given on the request made by the petitioner's side. The petitioner had not shown any reason for getting adjournments for the cross examination and also not shown any valid or reasonable grounds for recall of P.W.1. This respondent is a senior citizen and is struggling a lot in attending the court repeatedly and as such the petitioner's petition is liable to be rejected as there is no bonafide averment and no valid or sufficient reason assigned for the petitioner's absence. Hence the petition has to be dismissed.

Even though the 1st respondent denied the allegations but not made any serious objections with regard to the reasons stated for the absence of the petitioner on 10.03.2023. The case is filed in the year 2016, hence in the interest of justice and in order to avoid multiplicity of proceedings the petitioner may be given one more opportunity to contest the case on merits. But in order to avoid further delay, the petition may be allowed on conditions.

In the result, the petition will be allowed on payment of cost of Rs.300/- to the 1st respondent's counsel directly on or before 19.06.2023 and the petitioners shall be ready for cross examination on 19.06.2023 itself.

Failing compliance of any one of the conditions, the petition shall stand dismissed. Call on 19.06.2023.

Dictated to steno typist, typed by her directly through computer, corrected and pronounced by me in open court, this the 12th day of June 2023.

**Additional District Judge(FTC)
Vellore.**

Both side witnesses and Exhibits:

NIL

ADJ(FTC),Vellore.

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE(FTC),
VELLORE, VELLORE DISTRICT.**

**PRESENT: Tmt.P.Revathy, M.A.,M.L.,
Additional District Judge(FTC),Vellore.**

Dated this the 12th day of June 2023, Monday.

**I.A.NO.3/2023 in
O.S.NO.54/2016**

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1. Abrar Ahamed, aged 55 years, S/o.Late.Abdul Razack @ Asmath Basha Sahib, Muslim, residing at No.5/2, Kattur Sadayappa Street, 2nd Floor, Periyamet, Chennai.
2. Yasmeen, aged 56 years, W/o.Alauddin, D/o.Late.Abdul Razack @ Asmath Basha Sahib, Muslim, House wife, residing at No.5/2, Kattur Sadayappan Street, 2nd floor, Periyamet, Chennai-3.
3. Asfiya, aged 49 years, W/o.Liyakath Ali, D/o.Late.Abdul Razack @ Asmath Basha Sahib, Muslim, residing at No.5/2, Kattur Sadayappan Street, 2nd Floor, Periyamet, Chennai-3.
4. Farooque Ahmed (died) ..Petitioners/Defendants

//Vs//

1. Shamshad Begum, aged 56 years, W/o.Late.Abdul Razack @ Asmath Basha Sahib, Muslim, residing at No.58/350, Patel Yacoob Saheb Street, Fort, Vaniyambadi, Tirupathur District.
..1st Respondent/Plaintiff
2. Hajira Nasreen, aged 53 years, W/o.Faslur Rahman, D/o.Late.Abdul Razack @ Asmath Basha Sahib, Muslim, residing at No.5/2, Kattur Sadayappan Street, 2nd floor, Periyamet, Chennai-3.
..2nd Respondent/2nd defendant

Petition filed by the petitioners under Order 18, Rule 17 and Sec.151 of CPC, prays to recall P.W.1 for further cross examination in the suit.

This petition was filed before this court and coming before me on 08.06.2023 for final hearing in the presence of Thiru.S.Babu, counsel for the Petitioners and of Thiru.K.Umar, counsel for the 1st respondent and notice to the 2nd respondent dispensed with on petition and upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court doth order and decreetal order as follows:-

DECREETAL ORDER

1. That the petition will be allowed on payment of cost of Rs.300/- to the 1st respondent's counsel directly on or before 19.06.2023 and the petitioners shall be ready for cross examination on 19.06.2023 itself. Failing compliance of any one of the conditions, the petition shall stand dismissed. Call on 19.06.2023.

Given under my hand and the seal of this court, on this the 12th day of June 2023.

**Additional District Judge(FTC),
Vellore.**