



CRP(MD). No.3941 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 18.02.2026

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THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

**CRP(MD). No.3941 of 2025
and CMP(MD).No.20588 of 2025**

1.S.Shanmugam
2.S.Ravichandran
3.P.Sankar @ Sangan

... Petitioners

Vs.

1.Dhanabackiyam
2.Ramar
3.M.Periyasamy
4.P.Ponnambalam

... Respondents

PRAYER :-Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket orders dated 04.08.2025 and 28.08.2025 passed in O.S.No.371/2022 on the file of the District Munsif cum Judicial Magistrate, Thottiyam, Tiruchirappalli District.

For Petitioners : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.S.Simiyon Vergin
Legal aid counsel

ORDER

This civil revision petition has been filed to set aside the docket orders dated 04.08.2025 and 28.08.2025 passed in O.S.No.371/2022 on the file of the District Munsif cum Judicial Magistrate, Thottiyam, Tiruchirappalli District.



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2. Heard the learned counsel on either side and perused the records.

3. The present revision petition has been filed challenging the docket order passed by the trial Court. The learned counsel for the revision petitioners drew the attention of this Court to the docket proceedings dated 11.07.2023, which are extracted hereunder:

“11.07.2023 – D3 present and plaintiff present. Proof affidavit filed and recorded examined as PW1. Ex.A1 to Ex.A10 were marked and at request for cross of PW1 adjourned to 19.07.2023.”

as well as the subsequent proceedings, dated 12.10.2023

“12.10.2023 – D3 present. PW1 is present and cross examined partly. For cross of PW1 at request adjournment to 14.11.2023.”

and 28.08.2025.

“28.08.2025 – PW1 not turned up for cross examined, hence evidence of PW1 is scrapped. For further PWs if any call on 24.09.2025.”

4. It is seen that the trial Court, on the ground that PW1 did not present himself for cross-examination, proceeded to scrap the evidence of PW1.



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Challenging the same, the present Civil Revision Petition has been filed.

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5.The learned counsel for the revision petitioner submitted that, though the Court is empowered to close the evidence if a witness does not present himself for cross-examination, the trial Court has taken an extreme view in scrapping the evidence altogether. In support of this contention, reliance was placed on the judgment of this Court made in the case of G.Balaji and another Vs. Saravanasamy in C.R.P.(PD).No.2182 of 2019, particularly paragraph 12, which is extracted hereunder:

12. The above conduct of the Plaintiff, after having filed the proof affidavit and marked the documents, remaining absent for cross examination will amount to denial of opportunity to the opponent to disprove the claim and render the evidence as complete one. As held by this Court in Rajendran's case as well as Metilda's (supra) incomplete evidence of a witness who has failed to subject himself for cross examination shall not be retained on record. Even though there is no provision to eschew the evidence, the evidence of the Plaintiff in the above case, not tested by cross examination on account of his non appearance, does not even have the probative value, for, the incompleteness is attributable to the Plaintiff himself. The further contention of the respondent that the evidence can be used at the later stage of the proceeding as per Sec.



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33 of Evidence Act is also not sustainable for the reason the evidence herein is not the complete evidence in the eyes of law. As contended by the learned Senior Counsel for the petitioner, if a witness is allowed to avoid the witness box for cross examination after letting in evidence in chief examination his evidence cannot be retained on record and does not merit consideration. If such an evidence of a defaulting, delaying, clever or crooked and cunning witnesses is taken for consideration, it will run against the spirit of adversarial system of law. Thus, the plaintiff in the instant case, who could not appear before the court on the ground that his employer refused to grant leave for months and in fact years together, is not entitled to any equitable treatment and his evidence cannot be retained for considering its probative value. Even though it is countered by the respondent/Plaintiff that extensive cross examination has been done, it is relevant to note that the learned judge has not chosen to consider or accept the same and has not observed as such. If it is true that extensive cross examination has already been made, the matter need not have been adjourned for about seven hearings for continuation of cross examination.”

6.Per contra, the learned counsel for the respondents submitted that there is no infirmity in the order passed by the trial Court, as the revision petitioner failed to cross-examine PW1 despite several opportunities. It is further



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submitted that PW1 is aged about 80 years and that the suit has been pending for more than 11 years. Originally, the suit was filed in O.S. No. 299 of 2015 on the file of the District Munsif Court, Musiri, and was subsequently transferred to the Court of the Judicial Magistrate, Thottiyam, where it was renumbered as O.S. No. 371 of 2022. Considering the prolonged pendency and the age of PW1, the trial Court passed the impugned order.

7.The only point for consideration is, whether the trial Court is empowered to scrap the evidence of PW1 for non-subjection to cross-examination despite granting several opportunities?

8.This Court is of the view that, while the trial Court is empowered to close the evidence in such circumstances, it is not justified in scrapping the evidence altogether.

9.Accordingly, this civil revision petition is disposed of and the order passed by the trial Court is set aside, and one final opportunity is granted to the revision petitioners to cross-examine PW1. The trial Court shall fix a specific date on which the cross-examination shall be conducted and completed without fail. Further, taking into consideration that the suit has been pending for more



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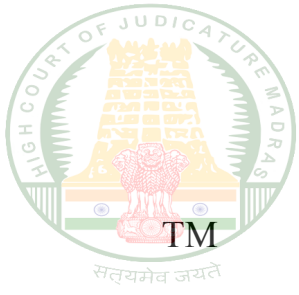
than 11 years, the trial Court is directed to dispose of the suit within a period of one year from the date of receipt of a copy of this order. It is made clear that if the revision petitioners fail to avail the opportunity and does not appear for cross-examination of PW1 on the date fixed, the trial Court shall be at liberty to close the evidence. No costs. Consequently, connected miscellaneous petition is closed.

10.The Court places on record its appreciation for the commendable efforts of the legal aid counsel for the first respondent, namely, Mr.S.Simiyon Vergin, for conducting the case diligently and providing valuable assistance to this Court. The High Court Legal Services Committee attached to this Bench shall pay a total sum of Rs.10,000/- towards remuneration to the legal aid counsel for conducting the cases, within a period of two weeks from the date of receipt of a copy of this order, without fail.

11.Registry is directed to forward a copy of this order to the Legal Aid Committee for information.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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- 1.The District Munsif cum Judicial Magistrate, Thottiyam, Tiruchirappalli District..
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.
- 3.The Legal Aid Committee,
Madurai Bench of Madras High Court, Madurai.



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N.SENTHILKUMAR, J.

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