

(2005) 09 MAD CK 0008

In the Madras High Court

Case No : C.R.P. (PD) No. 2060 of 2004 in C.M.P. No. 19796 of 2004

Radhabai Ammal and Another

APPELLANT

Vs

N. Loganathan and Others

RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 9
Constitution of India, 1950 — Article 227

Citation : AIR 2006 Mad 70 : (2005) 4 MLJ 625

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : T. Dhanya Kumar, for the Appellant; R. Margabandhu, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—The respondents in A.S. No. 106 of 2003 on the file of Principal District Judge, Vellore are the Revision Petitioners

herein. The appellants in the said appeal filed I.A. No. 133 of 2004 under Order 8, Rule 9 of C.P.C. to receive Additional Written Statement,

which was allowed, hence the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2. The petitioners respondents herein have originally filed the petition in I.A. No. 256 of 2000 for reception of additional written statement during

the pendency of suit in O.S. No. 259 of 2000 raising the plea of limitation, estoppel and other grounds, which was however closed without passing

any interim Order, hence an application in I.A. No. 133 of 2004 was taken out in the said A.S. No. 106 of 2003 for the very same relief.

Considering the plea taken by the respondents, the first Appellate Court found that the trial Court has hastily dismissed the application of the

respondents herein seeking permission to file Additional Written Statement and came to the conclusion that sufficient opportunity has to be afforded to them and allowed the said application.

3. Mr. Dhanyakumar, learned counsel appearing for the petitioners submit that the respondents deliberately failed to canvass the said points in time before trial Court; that the application has been filed seeking permission of the Court to file additional written statement before the trial Court, only after the trial was over which was dismissed; that the said Order was not challenged by the respondents herein, hence it is not open to them to file another application before the first Appellate Court, hence, at this stage, after a lapse of about 12 years, it is not proper on their part to seek permission to file additional written statement.

4. The learned counsel for the respondents reiterated the contentions raised by the respondents before the Court below and prayed for dismissal of the Civil Revision Petition.

5. I have carefully considered the arguments of the learned counsel on either side and perused the records.

6. It is seen from the records that the respondents herein have filed necessary application seeking leave to file additional written statement which was hastily dismissed by the trial Court, however, not on merits but on technical grounds, ignoring serious question of law, which was canvassed.

7. No doubt, the defendant can file a written statement as a matter of right and for doing so, he does not have to obtain the permission of the Court for filing additional written statement. Permission of the Court has to be obtained under Order 8, Rule 9, C.P.C. Under what circumstances leave is to be granted and how the discretion has to be exercised depends on the facts and circumstances of each case and in all such cases, the party, who seeks leave has to explain as to why this contention was not raised in the earlier pleadings. While exercising the discretion, the Court will consider the conduct of the party, stage of the litigation, delay that has occasioned, how far the opposite party will be put to hardship.

8. The dictum laid down with regard to the powers of the Court in granting leave for filling additional written statement is that the Court should take a lenient view, it should be positive and should have a liberal approach. The said proposition has been enunciated in the Judgment Subramanian

and three others Vs. Jayaraman, ,

(9) The approach of Law in permitting the Court to grant leave in such cases is positive. But, the Court while granting the leave could direct the

petitioner to comply with certain terms that the Court thinks fit and hence absolutely there is no impediment or hurdle or legal barrier put forth by

the Rule in allowing any additional statement subsequent to the written statement and the only shot provided in the arms of the Court for granting

leave is that it could allow the application on such terms as it thinks fit.... Therefore, it could be safely concluded that in all such cases, wherein the

defendant approached the Court with an application under Order 8, Rule 9 of the CPC praying to grant leave, Courts are expected to be liberal in

granting the leave but of course on terms as the Court thinks fit in the circumstances of the individual case.

9. In Soundaraessane v. Pouchapavady and two Ors., 2002 (3) LW 597, it has been held as follows:

9. Yet another consideration in exercising the discretion and granting leave under Order 8, Rule 9, C.P.C. would be to see whether the plaintiff is

prejudiced by such subsequent pleadings in any way. In the absence of any prejudice by such subsequent pleadings, in my considered opinion, the

discretion conferred on the Court under Order 8, Rule 9, C.P.C. should be exercised liberally; as otherwise, it will not be possible for the parties

to the litigation to prove their respective case, in consolidate, as a result of which, finality of the litigation will not be reached, giving way for

multiplicity of litigation, and consequently, ends of justice will not be met.

10. In the case on hand, before the trial Court the respondents have filed I.A. No. 256 of 2000, which was posted for enquiry on 2.7.2003,

thereafter, it was closed on 24.07.2003 without hearing the respondents or passing considered order, though other I.A. No. 35 of 1993, I.A. No.

132 of 1993 and I.A. No. 737 of 1993 were pending. In view of the fact, no order, passed on merits, the respondents have sought the same relief

before the appellate Court and the same was granted. Moreover, the reason assigned by the first appellate Court for granting such relief is that the

respondents herein have come to know the statement given by the petitioners herein before the Collector only during the examination of P.W.1 and

thereafter, they sent for the documents.

11. Considering the above facts and the ratio laid down in the judgments cited supra, the appellate Court has rightly allowed the application filed

by the respondents herein and the revision petition is liable to be dismissed. Considering the passage of time, this court is of the view that the

petitioners must be given opportunity to file their reply statement and permit both the parties, if they intended, to let in additional evidence and

dispose of the appeal on merits and in accordance with law on or before 31.12.2005.

12. With the above said observation the C.R.P. is dismissed. No Costs. Consequently connected C.M.P. is also closed.