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**(1996) 07 MAD CK 0079**

**In the Madras High Court**

**Case No :** Civil Revision Petition No's. 1566 to 1568 of 1996

R.S. Munirajan

APPELLANT

Vs

Jaya Theatre and Others

RESPONDENT

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**Date of Decision :** 10-07-1996

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, 151

**Citation :** (1996) 2 CTC 74

**Hon'ble Judges :** Raju, J

**Bench :** Single Bench

**Advocate :** R. Swaminathan, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Raju, J.—The above three revision petitions have been filed by the plaintiff in O.S.No.105 of 1991 on the file of the Court of Subordinate Judge, Kumbakonam. The salient features of the controversy involved for consideration in the suit and the course of conduct adopted at every stage by the plaintiff in the suit to delay the expeditious disposal of the suit have been already adverted to by me in my earlier order dated 17.4.1996 in CRP.Nos. 905 and 906 of 1996 and hence, I consider it unnecessary to refer to them once again and I make it clear that the proceedings now initiated by the plaintiff being a continuation of the earlier proceedings culminating in my earlier order, this order can be treated as an order also made in the same manner as dealing with a continuing process with reference to the conduct of the suit, which even during the last time when the matter was brought before this Court was at the stage of arguments before the trial Court.

2. It is necessary to appreciate the genuineness or otherwise of the modus operandi adopted by the petitioner- plaintiff to make reference to the fact that while disposing of CRP.No.515 of 1993 on 10.3.1995, a learned Judge of this Court issued a direction that the trial Court should dispose of the suit within six months from the date of such disposal of the revision petition. On more than one

occasion, time stipulated by this Court for such disposal came to be extended. In spite of the same, by the resourcefulness of the client and apparently the ingenuity of the counsel appearing for him to devise means and ways to retard the further progress of the suit at the time of arguments, applications came to be filed in the Court below to ensure that there is no disposal of the suit within the time prescribed by this Court. It is in the said context, on the rejection of two applications, earlier CRP.Nos.905 and 906 of 1996 were brought before me and were rejected. Instead of ensuring speedy disposal of the suit, the petitioner - plaintiff motivated and obviously activated by his litigious resourcefulness, has filed the present three applications. I.A.No.166 of 1996 was filed under Order 13, Rule 2 C.P.C. praying that the document proposed to be filed may be admitted and marked in evidence. I.A.No.167 of 1996 was filed u/s 151, C.P.C. to reopen the case since certain documents need be marked as per the request made in the other application referred to above. I.A.No.173 of 1996 came to be filed u/s 151, C.P.C. seeking permission to the plaintiff to file a third party affidavit no evidence in the case and to reopen the suit. The applications appear to have been opposed and the learned Judge passed separate orders rejecting the same.

3. As for the application in I.A.No.166 of 1996 filed under Order 23 Rule 2, C.P.C, the learned trial Judge stated that this is not a fit case, where the discretion to admit a document can be exercised at that stage of the proceedings in the light of the principles laid down by this Court in *Kanda v. Lohgu* 1950 (1) MLJ. 417 and by the Supreme Court in *Quamarul Islam Vs. S.K. Kanta and others*, . As for the application in I.A.No.167 of 1996, the learned trial Judge held that in the teeth of the orders of this Court in CRP.Nos. 905 and 906 of 1996 directing that the trial has to proceed in the manner, shape and stage at which it is already pending, there is no scope for complying with the request. In addition thereto, the dismissal of the application in I.A.No.166 of 1996 is also relied upon as a ground for rejecting the relief in this application. So far as I.A.No. 173 of 1996 is concerned, the learned trial Judge rejected the same on the ground third party affidavit in evidence cannot be received at that stage of the proceedings from which the Court below was directed to proceed with further.

4. Mr. R.Swaminathan, learned counsel appearing for the petitioner while inviting my attention to the decision of apex Court in *Billa Jagan Mohan Reddy and Another Vs. Billa Sanjeeva Reddy and Others*, contended that the Court below committed a grave error in refusing to entertain the document in question and that, therefore, the said order is liable to be set aside and consequently, according to the learned counsel for the petitioner, the orders in the other applications also have to be set aside, so that the matter has to be considered in the light of the document sought to be introduced after reopening the case also.

5. The decision in *Billa Jagan Mohan Reddy and Another Vs. Billa Sanjeeva Reddy and Others*, is the one, wherein the permissibility of entertaining additional evidence under Order 41, Rule 27 came to be considered. That was a case wherein the appellant appears to have produced certain documents at the stage

of arguments before the trial Court after obtaining the same from Revenue authorities and the trial Court refused to accept the same by condoning the delay on the part of the applicant therein. After obtaining return of that document from the trial Court, the same was sought to be produced as additional evidence. It is in that context, their Lordships of the Supreme Court held that though there was delay in production of documents, if the documents are found to be relevant to decide the issue in controversy and when the Court felt that the interests of justice require that the documents should be received, exercising the power under Order 41, Rule 27, C.P.C., the appellate Court would receive the same and consider the effect thereof and that their Lordships did not see any justification in that case for having refused to condone the delay and receive the documents.

6. I have carefully considered the submissions of the learned counsel for the petitioner. The fact that the trial Court as also the appellate Court have power to entertain additional evidence at any stage and consider such evidence also, if the Court considers it to be needed in the interests of justice, admits of no controversy. The question is, whether in a particular case the request was justified and the documents sought to be introduced are required and whether the Court in allowing such a claim or rejecting the same, has properly and judiciously exercised its discretion, which question, in my view, is to be decided with reference to the fact situation presented in each case and there cannot be any invariable rule of universal application, de hors the peculiar facts and circumstances of the case, in which such a request is made. So far as the present case is concerned, the request for reopening the case has been rejected earlier by the trial Court and that order, when challenged was not interfered with by this Court. It is not the case of the petitioner that the orders of this Court has been further challenged and got annulled from any superior Court. Similarly, one of the earlier requests made as a ground for reopening was to examine a particular auditor, That request to examine him, which was rejected also came to be sustained by this Court and that order still holds the field. It is in this context, the move manipulations and the behaviour and the mean tactics adopted by the plaintiff need consideration.

7. The course of conduct adopted in this case by the plaintiff, is to say the least, reprehensible and unbecoming of a bona fide party. A reference to certain portions of my earlier order in C.R.P.No.905 and 906 of 1996 will help to expose the unethical moves of the petitioner in some how retard the further progress of the suit from the stage at which it stood earlier viz., Arguments stage, in obedience to the directions earlier given and which order is in full force and effect. My observations in the earlier order, which needs reference are as follows:-

Suffice it to notice that the present revisions appear to be a move not only to delay the effective adjudication of the suit claim within the extended time-limit stipulated by this Court, but also appear to be engineered to get over, if any, the case proved already through oral and documentary evidence by the parties. Allowing the request of the petitioner at this stage would amount to permitting

modulation and tailoring of the case to suit the convenience of the plaintiff, by filling up the gaps and blanks as well as lacuna in the evidence adduced particularly when the subject matter in issue in the case rests on an oral agreement to sell a very valuable property said to be for a consideration of Rs. 56 lakhs.

The indulgence, if any, shown at this stage, in my view, will result in defeating the ends of justice perpetuate abuse of process of law rather than serving the ends of justice."

The temerity of the petitioner, despite all these to embark upon further obstructions can, if at all, be attributed only to reckless in the conduct of the litigation with the sole object mounting unnecessary pressure on the learned trial Judge to impede with the efficient implementation of the directions of the High Court to have the suit disposed of within the stipulated time. The irreconcilable surprise is as to how the counsel appearing for the petitioner in the court below also be a party to such tactics. It is high time that such tactics are avoided in the interests of justice.

8. As noticed earlier, date has been fixed for the early disposal of the suit in March, 1995 itself and even till date due to the machinations of the resourcefulness of the petitioner, the directions of this Court could not be effectively carried out. It is not as though that the request of the nature made by the plaintiff if not complied with, by rejecting the documents sought to be introduced, the parties will be without any remedy. If the document is a genuine and relevant one and absolutely necessary for the adjudication of the issue raised in the case and if it has been wrongly turned down, nothing precludes the party who has suffered on account of such rejection to challenge the judgment and decree rendered without such document, On the other hand, the suit of the year 1991, which has been directed to be disposed of within a particular time by fixing specifies dates on more than one occasion, cannot be allowed to be prolonged by the ingenuous tactics adopted by the plaintiff at every stage because it is his suit that is pending. Similarly, the request made in the other two applications, according to me, borders on sheer abuse of process of Court and virtually persuade the Court below to defy the earlier orders of this Court. If the petitioner was aggrieved against the earlier orders of this Court, nothing precluded the party to challenge the same before the Appellate forum.

9. The order declining to entertain the documents and the reasons assigned therefore have not been shown to be either vitiated by any patent error of law or perversity of approach. The orders passed in the other two applications are well merited. It is surprising that when the petitioner-plaintiff could not succeed in his attempts to have the auditor examined, he has invented the device of attempting to bring on record the sworn affidavit of the said person and if this is not misuse of the procedure and abuse of process of Court, I fail to understand what else it could be. The orders passed in the other applications declining to reopen as also declining to receive third party affidavit as evidence in the case, are well merited

and do not call for any interference in the hands of this Court. The revision petitions, therefore, fail and shall stand dismissed. The learned trial Judge shall ensure disposal of the suit within six weeks from the date of receipt of a copy of this order. C.M.P.Nos.8672 and 8673 of 1996 are dismissed.