

(1952) 03 MAD CK 0013

In the Madras High Court

Case No : Civil Revision Petition No"s. 2027 and 2028 of 1951

Subramanyam Chettiar and Others

APPELLANT

Vs

Isaki Ammal

RESPONDENT

Date of Decision : 24-03-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115, 35

Citation : AIR 1953 Mad 12 : (1952) 2 MLJ 196

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : G.R. Jagadeesa Iyer, for the Appellant; S. Ramachandra Iyer, for the Respondent

Judgement

Raghava Rao, J.—I am inclined after bearing both sides fully to uphold the order of the court below except to the extent of that part of it

which relates to the award of Rs. 5 as costs, payable by the first defendant to the plaintiffs as a condition of the amendment of the written

statement. The suit was one which certainly involved a fairly high stake, and having regard to the considerations, which might well operate against

the granting of the amendment, the least that the court below ought to have done was to make the provision of costs more decent than the paltry

figure of Rs. 5 taxed by it in the exercise of its discretion. The amendment was either one which should have been permitted conditionally or

unconditionally. If it is to be treated as a case in which the amendment can only be ordered conditionally, and if the condition as to payment of

costs is to be regarded as within the ambit of the conditional character of such an order, and, if the order itself is susceptible of interference by me

in revision here, it is difficult for me to understand why I should not interfere

with the discretion of the court below in regard to the Rs. 5 of costs which it made conditional in the exercise of its discretion. I do not think that the powers of revision of this court are so far circumscribed by the provisions of the statute or by any considerations laid down by the case law u/s 115, C. P.C. in regard to a matter like this that I should feel that the Rs. 5 of costs must be allowed to remain sacrosanct. It is enough for me to say that, in this case having regard to the nature of the stake and the other considerations" that may bear upon the matter, at least a sum of Rs. 100 might have been directed to be paid by the first defendant to the plaintiffs as condition of the amendment.

2. Mr. Ramchandra Aiyar has rightly insisted that I should not ordinarily interfere with orders which are discretionary, that are made by the court below. But anyhow as I have already said, having listened to counsel of both sides fully and having considered all the aspects of the case, I do feel that not only is my discretion in this case permissible, but it is called for on all the considerations which may legitimately enter into a matter of this description. This sum of Rs. 100 will be paid by the respondent before me to the petitioner's advocate within two months from this date, failing which the revision petition will stand allowed with costs, even then the pleader's fee payable in the court below being liable to be treated as not less than a sum of Rs. 300 which I have fixed in the foregoing part of my order. The petitioners will pay the respondent her costs in C.R.P. No. 2027 of 1951.