

(2001) 06 MAD CK 0015
In the Madras High Court

VE. Vairavan Chettiar

APPELLANT

Vs

AR. Ramasamy Chettiar

RESPONDENT

Date of Decision : 19-06-2001

Acts Referred:

Citation : (2001) 3 MLJ 227

Hon'ble Judges : V. Kanagaraj, J

Bench : Division Bench

Judgement

V. Kanagaraj, J.—All the above three civil revision petitions are directed against the fair and decretal orders respectively dated 23.3.2001,

21.3.2001 and 21.3.2001 respectively made in I.A.No. 39 of 2001, I.A.No. 127 of 2001 and I.A.No. 128 of 2001 all in O.S.No. 20 of 1997

by the Court of District Munsif, Devakkottai. All the above Interlocutory Applications have been filed by one and the same petitioner viz, the third

defendant in the suit, who is none other than the petitioner in all the above civil revision petitions.

2. For the sake of easy reference, C.R.P.Nos. 1657, 1658 and 1659 of 2001 are respectively referred to hereinafter as the first, second and third

revision petitions respectively.

3. So far as the first revision petition above is concerned, the petitioner herein filed a petition in I.A.No. 39 of 2001 in O.S.No. 20 of 1997 before

the trial Court praying to appoint a new Commissioner to enquiry into the charge statement filed by the plaintiff and the objection filed by the third

defendant, to take oral evidence and to submit a report on averments such as that on 17.12.2000, when the enquiry was fixed by the

commissioner in this matter, on account of unavoidable circumstances, he was

held up at Madras and hence he issued a telegram promptly to his counsel expressing his inability to attend to the enquiry and requesting him to seek an adjournment of the enquiry that on an understanding between the learned Counsel for the petitioner and the counsel for the plaintiff since information had been passed on by the petitioner's counsel to the effect that the enquiry could be adjourned on his own accord to some other day his counsel also could not attend to the enquiry and in spite of such prompt arrangements made, the Advocate- Commissioner conducted the enquiry on 17.12.2000 in the absence of the petitioner or any representation made on his behalf without an opportunity for him to be heard and to be cross-examined P.W.1 and hence the petition with the prayer extracted supra.

4. In the above petition, the trial Court has conducted an enquiry wherein on behalf of the petitioner, has got examined himself as P.W.1, for oral evidence and also marked the telegram as Ex.A-1, But, on behalf of the respondent, no oral or documentary evidence has been let.

5. At this stage, alleging that while recording his evidence as P.W.1 in I.A.No. 39 of 2001 something else has been typed in his deposition instead of what he had actually deposed, the petitioner filed I.A.No. 127 of 2001 to reopen I.A.No. 39 of 2001 and I.A.No. 128 of 2001 to recall and examine the petitioner as P.W.1 in I.A.No. 39 of 2001.

6. The trial Court, in consideration of the pleadings by parties and upon hearing the learned Counsel for both dismissed I.A.Nos. 127 and 128 of 2001 on 21.3.2001 and I.A.No. 39 of 2001 on 23.3.2001. Aggrieved, the petitioner has come forward to file all the above civil revision petitions on some grounds of revision as brought forth in the memorandum of grounds of revisions.

7. Today, when all the above civil revision petitions have been taken up for consideration, on perusal of the averments as pleaded in the petitions and the accompanying affidavits before the lower Court and the orders passed by the lower Court and upon hearing the learned Counsel for both, what comes to be known is that the petitioner/third defendant has filed all these application almost in a short span of time wherein the first application in I.A.No. 39 of 2001 has been filed seeking to appoint a new Advocate-Commissioner to enquire the charge statement filed by the

plaintiff and the objection filed by the third defendant and all documents and to take oral evidence and to submit a report. The second and third

applications in I.A.Nos. 127 and 128 of 2001 have been filed respectively to reopen I.A.No. 39 of 2001 and to recall and examine the petitioner

as P.W.1 in the enquiry in I.A.No. 39 of 2001, needless to mention that all these reliefs are interconnected and interrelated.

8. The learned Counsel appearing on behalf of the petitioner in all the above C.R.Ps. would impress upon the Court to the extent that the petitioner

had not been afforded with any opportunity to be heard so far as it related to the Commissioner's enquiry held on 17.12.2000, which according to

him is one sided and ex pane since there was absolutely no participation on the side of the petitioner at all. The learned Counsel would also further

convince the Court regarding the inability caused on the part of the petitioner in attending the enquiry conducted by the Advocate- Commissioner

on 17.12.2000 on account of unforeseen circumstances which he could not have avoided and therefore as requested on his behalf by the learned

Counsel for the petitioner himself through the learned Counsel for the other side, a short adjournment could have been granted so as to decide the

matter and submit his report with due opportunity for him to be heard in full consideration of his case also. He would also point out that on account

of this, serious prejudice has been caused to him affecting his fortunes in the case and therefore would seek to the reliefs extracted supra.

9. The lower Court, since there was no proper representation made on the part of the petitioner on 17.12.2000 in the Advocate- Commissioner's

enquiry, even in the event that the petitioner was not personally able to appear before the Advocate- Commissioner on 17.12.2000, it would

consider the same as wilful and wanton and with interest to protract the proceedings and further remarking that the reasons assigned by the

petitioner are not genuine and would ultimately dismiss the application in I.A.No. 39 of 2001 by its order dated 23.3.2001 besides dismissing

I.A.Nos. 127 and 128 of 2001 by orders dated 21.3.2001 on ground that only after being pointed out by the learned Counsel for the other side

about the weakness of the petitioner's case, he has come forward to file these two petitions to reopen I.A.No. 39 of 2001 to fill up the lacuna and

further observing that a witness can be recalled if any material facts have been omitted but not to correct the deposition already made.

10. The learned Counsel appearing on behalf of the respondent would also vehemently attack any leniency shown to the petitioner particularly

regarding the prayer in I.A.No. 39 of 2001 connected with the first revision petition above, which is for the appointment of a different Advocate-

Commissioner. It may be mentioned here that since I.A.Nos. 127 and 128 of 2001, respectively connected to the second and third revision

petitions above, are for reopening and recalling P.W.1 to depose in favour of the reliefs sought for in I.A.No. 39 of 2001, the fate of these two

applications lies with the decision to be taken in I.A.No. 39 of 2001 connected to the first revision petition above.

11. So far as I.A.No. 39 of 2001 is concerned, the Commissioner's report, based on his assessment and enquiry, being a document of paramount

importance to decide the case, if anything goes wrong, however, due to the slackness of any party, it is sure and susceptible to affect the basic

rights of the parties thus having far reaching consequences. Therefore, the enquiry conducted by the Advocate- Commissioner, since being the vital

aspect for decision in the whole of the case, the learned Counsel for the petitioner would feel that without any opportunity for the petitioner to be

heard, the Advocate- Commissioner has conducted the enquiry on 17.12.2000 in which the petitioner has absolutely no participation and it would

seriously impair his fortunes in the case and therefore would pray for setting aside the entire enquiry proceeding as held on 17.12.2000 and the

report submitted by the Advocate- Commissioner.

12. However, though it is prayed in the petition for the appointment of another Commissioner in the place of the existing one, during arguments

that has not been pressed for by the learned Counsel appearing for the petitioner since he was keen only to get the relief. No proper reasons have

also been shown on the part of the petitioner for the change of the Commissioner since no specific allegations have been levelled against the

Commissioner to have acted in a partial or vindictive manner and therefore appointing a different Commissioner is not only out of question but also

cannot be done in the circumstances of the case and hence this plea is rejected so far as it is concerned with the application in I.A.No. 39 of 2001

connected with the first revision petition above.

13. However, regarding the opportunity claimed for the petitioner to be heard in

the enquiry by the Commissioner, this Court is of the view that just for the simple reason the counsel for the petitioner did not file any application seeking adjournment of the enquiry proceeding from 17.12.2000 to some other day, inspite of instructions imparted on the part of the petitioner by Ex.A-1 telegram from Chennai, which has not been denied either on the part of his counsel or contested on the part of the other side, the absence of the petitioner before the Advocate-Commissioner in the enquiry cannot be held either wilful or wanton but under inevitable circumstances. Therefore, the petitioner cannot be denied of an opportunity being heard, in giving weightage to the high principles of natural justice. Therefore, on such general honest that the petitioner should not be denied of his opportunity, this Court is constrained to set aside the fair and decretal order dated 23.3.2001 passed by the lower Court in I.A.No. 39 of 2001 in O.S.No. 20 of 1997 and to allow the said application.

In result,

(i) C.R.P.No. 1657 of 2001 is allowed setting aside the fair and decretal order dated 23.3.2001 made in I.A.No. 39 of 2001 in O.S.No. 20 of

1997 by the Court of District Munsif, Devakkottai.

(ii) However, the request for the appellant of a new Advocate- Commissioner made on the part of the petitioner in I.A.No. 39 of 2001 (concerned

with C.R.P.No. 1657 of 2001) is rejected. The report of the Advocate- Commissioner, dated 20.12.2000 based on the enquiry conducted by

him on 17.12.2000 is hereby set aside and the same Advocate- Commissioner is hereby directed to conduct an enquiry with due opportunity for

both sides to be heard in full and to submit a report in consideration of such materials placed on record to the Court.

(iii) Since it is a long pending matter, yet another direction is given to the effect that the Advocate- Commissioner shall expedite the enquiry

procedures, fixing on early date and on conducting such enquiry to submit the report within sixty days from the date of receipt of this order by the

lower Court.

(iv) In view of the decision arrived at in C.R.P.No. 1657 of 2001 pertaining to I.A.No. 39 of 2001, the other two C.R.Ps. in C.R.P.Nos. 1658

and 1659 of 2001 become unnecessary and they are disposed of as such.

14. Consequently, C.M.P. No. 9128 of 2001 is closed.

15. However, in the circumstances of the cases, there shall be no order as to costs.