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**(2007) 04 MAD CK 0090**

**Madras High Court (Madurai Bench)**

**Case No:** Civil Revision Petition (PD) (MD) No. 719 of 2005 and C.M.P. (MD) No. 5575 of 2005

A. Perumal Raj

APPELLANT

Vs

B. Rajendran

RESPONDENT

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**Date of Decision:** April 10, 2007

**Citation:** (2007) 04 MAD CK 0090

**Hon'ble Judges:** S. Nagamuthu, J

**Bench:** Single Bench

**Advocate:** D. Nallathambi, for the Appellant; M. Thilagar, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

This Civil Revision Petition has been filed challenging the order dated 08.04.2005 made in I.A. No. 954 of 2004 in O.S.

No. 88 of 2004 on the file of the District Munsif, Aruppukottai. Brief facts of the case are as follows:-The petitioner is the defendant in O.S. No.

88 of 2004 on the file of the learned District Munsif, Aruppukottai and the respondent herein is the plaintiff. The respondent has filed the above suit

for recovery of money due under a promissory note. The petitioner has filed a written statement denying the execution of the promissory note.

After framing of issues, the trial Court has proceeded with the trial of the case. On the side of the plaintiff, it is reported that two witnesses have

been examined and on the side of the petitioner/defendant, D.W.1 alone has been examined. At this stage, the petitioner/defendant has filed I.A.

No. 954 of 2004 seeking permission to file additional written statement. The respondent opposed the said application by filing counter stating that

the petition has been filed so belatedly and the intention behind the petition is only to drag on the proceedings. When the suit has been pending

from the year 2002 onwards it is too late to file this I.A. at this length of time., It has also been stated in the counter that the allegations made in

the additional written statement have got no relevance to the issues involved in this Suit.

2. After hearing the learned counsel for both parties and after perusing the records, the learned District Munsif by order dated 08.04.2005 has

dismissed the said LA. It is the said order which is now under challenge in this Civil Revision.

3. In paragraph 5 of the order of the learned District Munsif has concluded that the LA. deserves to be dismissed on the ground that the same has

been filed belatedly without assigning any reason as to why, it was not filed in time. The learned District Munsif has further held that it is only with a

view to drag on the proceedings, the said LA. has been filed. Regarding these findings, the learned counsel for the petitioner would submit that in

the original written statement, it has been specifically pleaded that the suit promissory note was not at all executed by the petitioner and would

further contend that the additional written statement is only to supplement the same by pleading the circumstances under which the plaintiff has been

forced to file the suit by creating the promissory note. Therefore, the learned counsel for the petitioner concluded his arguments saying that as per

various judgments of the Hon"ble Supreme Court and also by this Court including the one reported in 2006 (5) C.T.C. Page 580 (Kaliatbal Vs.

Muntgathal and Others), the lower Court ought to have had liberal approach in granting the prayer for filing additional written statement,

4. Per Contra, the learned counsel for the respondent would submit that the suit has been pending from the year 2002 on wards and nothing

prevented the petitioner from filing detailed written statement before the commencement of the trial. He would rely on the judgment of this Court

reported in Chandra, Chinnadurai and Poongavanam Vs. Ranganathan, he prays for dismissal of the C.R.P.

5. I have considered the rival contentions made by the both the counsel.

6. As rightly pointed out, the lower Court has dismissed the LA solely on the ground that it has been filed belatedly and further holding that the said

move is only with a view to drag on the proceedings unnecessarily. Of course, it is correct that there is unnecessary delay on the part of the

petitioner to file the additional written statement and also nothing prevented the petitioner from filing the additional written statement atleast before

recording of the oral evidence. But on that score alone, the prayer of the petitioner to file additional written statement cannot be denied in view of

the judgment of this Court reported in 2006(5) C.T.C. Page 580 (Supra cited) wherein the learned Judge has relied on the judgments of the apex

Court reported in 2006(2) C.T.C. Page 55 (Ahmed Meera V. S. Kumaraswamy), Baldev Singh and Others Etc. Vs. Manohar Singh and Another

Etc., and also a judgment reported in AIR 1922 249 (Privy Council) . In Paragraph 13 of the judgment, the learned judge has held as follows:

Para 13. As already stated, the rustic people, who depend upon the advise of the counsel appearing for them, cannot be faulted and that did not

take due diligence while filing their earlier written statement. Furthermore the amendment, if allowed, that would avoid multiplicity of proceedings

by filing another Suit, which also avoid the conflicting judgments rendered by the Court in a Suit filed by the respondents for declaration and the

Suit to be filed by the petitioner seeking same prayer in a subsequent Suit. Having regard to the above said facts, this Court is of the considered

view that the interest of justice would be met if the petitioner is allowed to raise the pleas by paying necessary fee. The necessary corollary would

be the order of the Trial Court non-suiting the petitioner on pedantic technicalities has to be set aside and the same is set aside and the Revision is

allowed. It is needless to say that all the defence the respondents are having legally and factually can be agitated before the Trial Court.

Similar are the facts in the case on hand also.

7. Applying the principles enumerated in the said judgment this Court has to have a liberal approach while dealing with the prayer for permission to

file additional written statement. The learned counsel for respondent relies on Paragraph 12 of the judgment, reported in 2005(4) L.W. Page 482

wherein this Court has held as follows:

Para 12. The object of the law of pleadings is that the Court and the respective parties, should fully know of the case before the parties go in for

trial, so that, the trial may proceed in that well defined channel. Now, by putting forth new set of facts, after the plaintiffs evidence is closed, the

Defendants are only attempting to divert the process of trial. If the application is allowed, there would be no remedy to the plaintiff to adduce

proper evidence, thereby, meeting the defence plea set forth.

8. But in the case on hand facts are not similar. In the reported case, a new set of facts were sought to be put forth after the plaintiffs evidence was

closed to divert the process of trial. But in the case on hand, no new plea is taken and what is sought to be done is only to supplement the earlier

written statement by furnishing more details. Therefore it is not the case that the respondent would be put to any prejudice if the petition is allowed.

Even during arguments, learned counsel for the respondent has not raised any question of prejudice to the respondent if the additional written

statement is allowed to be filed. For all the above said reasons, by having liberal approach, the learned District Munsif ought to have allowed the

LA. Thus the impugned order deserves to be set aside and accordingly set aside. I.A. No. 954 of 2004 stands allowed.

9. On perusal of the records, it is made clear that the Original Suit was filed before the Sub Court, Virudhunagar in O.S. No. 2 of 2000 and later it

was transferred to Sub Court, Aruppukottai and re numbered as O.S. No. 141 of 2001 and still later it was transferred to the District Munsif

Court, Aruppukottai and renumbered as O.S. No. 88 of 2004. Considering the fact that the suit has been pending from the year 2000 onwards, it

is absolutely necessary to issue a direction to the learned District Munsif, Aruppukottai to dispose off the suit before the end of June 2007. The

learned counsel for the petitioner undertakes that the petitioner would co-operate for the disposal of the suit before the end of June 2007. It is

further made clear that if the respondent wants to recall any witness for the purpose of adducing any witness or for the purpose of cross-

examination, he shall be given the opportunity. The trial shall not be protracted at any cost beyond June 2007.

10. Since the suit has been pending from the year 2000 and this I.A was filed only in the year of 2004, the respondent should be adequately

compensated by imposing appropriate cost on the petitioner. Considering the facts and circumstances of the case, the petitioner is directed to pay

Rs. 1000/- towards costs to the respondent within 15 days from the date of receipt of a copy of this order. With above directions, this Civil

Revision Petition is allowed. Connected C.M.P. is also closed.