

**Muniyandi Vs. Superintending Engineer and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/922872](http://sooperkanoon.com/922872)

**Court :** Chennai

**Decided On :** Oct-20-2011

**Judge :** M.Jaichandren, J.

**Appeal No. :** C.R.P.(MD).1417 of 2009 and M.P.No.1 of 2009

**Appellant :** Muniyandi

**Respondent :** Superintending Engineer and ors

**Judgement :**

1. This Civil Revision Petition has been filed against the order, dated 17.11.2008, made in I.A.No.284 of 2004, in O.S.No.297 of 2004, on the file of the District Munsif Court, Pattukottai.

2. The petitioner herein had filed the suit, in O.S.No.297 of 2004, praying for the relief of permanent injunction, restraining the defendants therein from erecting electricity poles in the suit property. The fourth respondent Tamilnadu Electricity Board had filed a written statement in the said suit, on 4.11.2004, stating that the electricity poll had been erected in the suit property, on 17.9.2004, even before the filing of the suit, on 21.9.2004.

3. Even after the filing of the written statement, by the fourth respondent Tamilnadu Electricity Board, the petitioner had not filed any amendment petition, to amend the prayer in the suit, praying for a mandatory injunction. However, the petitioner herein, who is the plaintiff in the suit, in O.S.No.297 of 2004, had filed an

interlocutory application, in I.A.No.284 of 2008, on 5.2.2008, to amend the prayer in the said suit, praying for a mandatory injunction, to direct the concerned respondents, to remove the electricity poles, which had already been erected in the property belonging to the petitioner. As there was a long and unexplained delay in the filing of the interlocutory application, the said application had been dismissed by the trial Court, by its order, dated 17.11.2008, when the suit had already been taken up for trial. In such circumstances, the trial Court had found it fit to dismiss the interlocutory application filed by the petitioner stating that it had been filed, belatedly.

4. The learned counsel appearing on behalf of the petitioner had relied on the following decisions in support of his contention that an amendment of the pleading should be allowed, liberally, since, procedural obstacles ought not to impede the dispensation of justice and that the Court concerned cannot go into the merits of the application, at that stage.

1. Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others [2006(2) CCC 177(SC)]

2. Mary Leela Vs. A.Squarts Gabreal (2008(1) TLNJ 139)

3. R.Manjula Vs. R.Ramanujam and another (2008(4) TLNJ 213) and

4. M.Thankraj Vs. M.Paul Raj (2009(2) TLNJ 288)

5. Per contra, the learned counsel appearing on behalf of the fifth respondent had submitted that he had spent a huge amount of money for installing the motor and the pumpset, in his borewell, to irrigate his agricultural lands. The petitioner had filed the suit, in O.S.No.297 of 2004, only with the mala fide intention of causing serious financial loss and mental agony to the fifth respondent. He had further stated that the electricity poles had already been erected in the land belonging to the petitioner and the electricity connection had also been given, on 17.9.2004, even before the filing of the suit, on 21.9.2004. Even after the filing of the written statement by the fourth respondent, on 4.11.2004, the petitioner had not opted to amend the prayer in the plaint, praying for a decree of mandatory injunction. In

fact, the petitioner had filed the interlocutory application, in I.A.No.284 of 2008, belatedly, on 5.2.2008, after a delay of nearly 3 1/2 years. Hence, the interlocutory applicaiton filed by the petitioner had been rightly rejected by the trial Court, by its order, dated 17.11.2008.

6. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to interfere with the impugned order of the District Munsif Court, Pattukkottai, dated 17.11.2008, made in I.A.No.284 of 2008, in O.S.No.297 of 2004. The trial Court had rightly dismissed the interlocutory application filed by the petitioner, who is the plaintiff in the suit, in O.S.No.297 of 2004. The interlocutory application, filed by the petitioner, for amending the prayer in the plaint, to seek the relief of mandatory injunction, had been filed, belatedly, after nearly 3 . years after the erection of the electricity poles in question. The petitioner had not explained the delay in the filing of the interlocutory application. Further, nothing has been shown on behalf of the petitioner, to show that the delay in the filing of the interlocutory application was bona fide in nature. As such, the civil revision petition filed by the petitioner is liable to be dismissed. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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