



*C.R.P(MD)No.1004 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2023**

CORAM

**THE HON'BLE MR.JUSTICE C.SARAVANAN**

**C.R.P(MD)No.1004 of 2023**

**and**

**C.M.P(MD)No.4728 of 2023**

Sankarpandi

...Petitioner/Petitioner/  
Defendant

Vs.

Ganesan

... Respondent/Respondent/  
Plaintiff

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 20.02.2023 made in I.A.No.3 of 2022 in I.A.No.344 of 2017 in O.S.No. 498 of 2016 on the file of the Additional Subordinate Judge, Dindigul.

For Petitioner : Mr.D.Senthil  
For M.P.Banu Prasath

**ORDER**

The present Civil Revision Petition has been filed against the fair and decreetal order, dated 20.02.2023 made in I.A.No.3 of 2022 in I.A.No.344 of 2017 in O.S.No.498 of 2016 on the file of the Additional Subordinate Judge, Dindigul.



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2. The petitioner is the defendant before the Additional Sub Court, Dindigul in O.S.No.498 of 2016 filed by the respondent. The respondent has filed the above suit to recover a sum of Rs.5,84,666/- together with interest on the principal amount of Rs.5,00,000/-.

3. It appears that the petitioner was set *ex parte* on 24.04.2017. On the same day, an order also came to be passed for attaching the property of the petitioner. Meanwhile, the petitioner also filed I.A.No.1 of 2019 for sending the signature for examination by an expert after comparison under Order 26 Rule 10 (a) of C.P.C. I.A.No.1 of 2019. I.A.No.1 of 2019 was dismissed by the Additional Sub Court, Dindigul with the following observations:

*8. On perusing the entire case records and the arguments put forth on both side, this court finds that the Plaintiff has filed the suit for recovery of amount by saying that the defendant borrowed a sum of Rs.5,00,000/- on 27.05.2015 at the residence of Plaintiff and for the due repayment of principal amount with interest, the defendant executed suit pronote on 27.5.2015, but the defendant filed his written statement by denying the receipt of any amount from the Plaintiff and any body and denied the execution of pronote and specifically stated that the signature found in the disputed pronote. pronote is not that of the defendant and on the date of the pronote the petitioner was at Jammu and kashmir and not at Dindigul. Therefore this court finds that before filing of the plaintiff issued legal notice to the defendant and the same has been received by him and even after*



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*receipt of legal notice, he failed to give reply to the legal notice. Further though the defendant was worked at Jammu and Kashmir there are possibilities for him to visit to his native place on leave or long vacation. Further the plaintiff is having right to adduce Oral and documentary evidence to prove his case and at that time, the defendant can cross examine the plaintiff side witnesses to disprove the case of the Plaintiff and thereafter the defendant is having lot of chances to prove that on the date of alleged pronote, he was not in Dindigul and only after that he is entitled to send the document for comparison of his signature, hence this Partition filed at this stage is premature. Further by giving liberty to the Petitioner/ Defendant to file this kind of Petition with admitted document at the appropriate time, this petition can be dismissed as premature.*

*9. In the result, this petition is dismissed. No costs.*

4. The petitioner has secured an interim order against the aforesaid order and further stayed the proceedings in O.S.No.498 of 2016 filed by the respondent by an order, dated 25.04.2022. Meanwhile, the petitioner had also filed I.A.No.344 of 2017 to raise the order of attachment. The application filed for raising the judgment was dismissed for non-prosecution. Therefore, the petitioner filed I.A.No.3 of 2022 to condone the delay of 973 days in restoring the application filed for raising the order of attachment. The Additional Sub Court, Dindigul dismissed the application filed by the petitioner with the following observations:

"9. ...இதனிடையே இ.ம.எண்.344--2017 27.09.2019  
அதாவது இ.ம.எண்.343/2017 மனு தள்ளுபடி செய்யப்பட்ட



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பின்னிட்டு விசாரணைக்கு பலமுறை ஒத்தி வைக்கப்பட்ட நிலையில் இந்த மனுதாரர் மேற்படி மனுவினை தொடர்ந்து நடத்த முன்வரைவில்லை என்பதால் இறுதியாக 27.09.2019 அன்று தான் தள்ளுபடி செய்யப்பட்டுள்ளது. மேற்படி தள்ளுபடி செய்யப்பட்ட பின்பும் அசல் வழக்கில் இ.ம.எண்.1/2019 அதாவது உரிமையியல் நடைமுறை சட்டம் கட்டளை 26 விதி 10(a)ன் கீழ் மனு தாக்கல் செய்யப்பட்டு தொடர்ந்து அந்த மனு நிலுவையில் இருந்து 29.11.2021ல் தள்ளுபடி செய்யப்பட்டுவிட்டது. ஆக இ.ம.எண்.344/2017 27.09.2019ல் தள்ளுபடி செய்யப்பட்ட பின்னிட்டு அசல் வழக்கில் எதிர்மனுதாரர் தொடர்ந்து ஆஜராகி தாக்கல் செய்யப்பட்ட பல மனுக்களையும், அசல் வழக்கிலும் விசாரணையில் கலந்து கொண்டுள்ளார். எனவே 27.09.2019 அன்று தள்ளுபடி செய்யப்பட்ட சங்கதி மனுதாரருக்கு தெரியவில்லை என்று கூறும் சங்கதி இந்நீதிமன்றத்தால் ஏற்றுக்கொள்ளத்தக்கதாக இல்லை. எனவே மனுதாரரின் மனு உரிய காரணம் சொல்லப்படவில்லை என்பதால் இச்சூழ்நிலையில் இம்மனு ஏற்றுக்கொள்ளத்தக்கதாக இல்லை என்றே இந்நீதிமன்றம் தீர்வு காண்கிறது.

10.இறுதியாக, இம்மனு தள்ளுபடி செய்து உத்தரவிடப்படுகிறது. செலவுத் தொகை இல்லை.”

5. I have considered the arguments advanced by the learned counsel for the petitioner. I have also perused the impugned order and the background of the case.

6. The suit is of the year 2016. Earlier, the petitioner was set *ex parte* on 24.04.2017, which appears to have been later set aside. Pursuant to which, the petitioner's written statement has been taken on record. The petitioner has also incidentally filed I.A.No.1 of 2019 under Order 26



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Rule 10(a) of C.P.C for getting a report of the expert after comparison.

Since the application was dismissed, the petitioner has also filed C.R.P(MD)No.666 of 2022 and has secured an interim order.

7. In my view, no useful purpose will be served by raising the order of attachment as admittedly according to the petitioner, the property is not proposed to be sold barring a stigma that the property has been attached. There will be no other prejudice that will be caused to the petitioner. Consequently, no interference is warranted at this stage.

8. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

**24.04.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
sn

To  
1.The Additional Subordinate Judge,  
Dindigul  
  
2.The Section Officer  
Vernacular Section,



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Madurai Bench of Madras High Court,  
Madurai.



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**C.SARAVANAN,J.**

SN

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