

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.1676 of 2015

and

M.P.No.1 of 2015

Valarmathi

.. Petitioner

Vs

G.Kannanbal

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.678 of 2014 in O.S.No.28 of 2013 before the Sub Court, Mettur dated 19.01.2015.

For Petitioner : Prof.M.Udaya Bhanu

For Respondent : Mr.N.Manokaran

ORDER

The Civil Revision Petition is filed to set aside the order passed in I.A.No.678 of 2014 in O.S.No.28 of 2013 before the Sub Court, Mettur dated 19.01.2015.

2.The respondent as a plaintiff filed a suit in O.S.No.28 of 2013 for recovery of money due on a promissory notes dated 09.02.2010. After issuance of notice, the suit has been filed. The defendant filed the written statement and contested the suit wherein she raised the plea that she has borrowed Rs.1 lakh but the suit has been filed for Rs.2 lakhs and so, the promissory notes are forged one. Hence, she filed an application in I.A.No.678 of 2014 to send for the promissory notes to the Forensic Department for comparison. The Trial Court after hearing both sides, has dismissed the application. Against which, the present Civil Revision Petition has been filed by the petitioner/defendant.

3.Learned counsel for the petitioner submitted that she borrowed Rs.1 lakh and also given a signed blank promissory note as security and paid Rs.70,000/- as interest. He further submitted that her brother also borrowed Rs.70,000/-, he has also executed a promissory note and paid interest till his death in the year 2011. He would also submitted that the petitioner is liable to pay Rs.1 lakh and not Rs.2 lakhs as in the reply notice. He further submitted that the promissory notes had not contained the signature of the petitioner. That factum was not considered by the Trial Court. Hence, he

prayed for setting aside the order passed by the Trial Court.

4. Resisting the same, the learned counsel for the respondent submitted that in paragraph No.4 of the reply notice and in paragraph No.7 of the written statement, the petitioner/defendant never raised the plea of forgery but she has stated that she has given a signed blank promissory note. In such circumstances, no purpose will be served if the document has been sent for the Forensic Department to obtain the opinion from the hand writing expert. Hence, he prayed for dismissal of the revision petition.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. The respondent as a plaintiff filed a suit for recovery of money due on a promissory notes alleged to be executed on 09.02.2010 each for Rs.1 lakh. Before filing of the suit, notice has been issued wherein in paragraph No.1, it was specifically stated that she borrowed Rs.2 lakhs on 09.02.2010 and executed two promissory notes each promissory note contains Rs.1 lakh. Reply has been sent by the petitioner herein wherein it was stated that she denied the averments in paragraph No.4 of the reply notice and has also stated that

she borrowed Rs.1 lakh in the year 2009 and given a signed blank promissory note for the security of the said amount and paid Rs.70,000/- as interest. She further stated that her brother Arulmani has borrowed Rs.70,000/- and executed a promissory note. The said Arulmani died in the year 2011 and he has paid the interest for the said amount till his death. So, the defendant is liable to pay Rs.1 lakh and she never borrowed a sum of Rs.2 lakhs. Therefore, in the written statement she has never stated that the promissory notes are forged. It is also appropriate to consider the written statement wherein in paragraph No.4, there is a general denial and in paragraph No.7, she has stated that she borrowed Rs.1 lakh and executed a promissory note. She has further stated that her brother Arulmani has borrowed Rs.70,000/-, executed a promissory note and paid interest for the said amount till his death. She has also stated that she never borrowed Rs.2 lakhs from the plaintiff. But she has never stated that the documents are forged. Therefore, the hand writing expert opinion is necessary if the petitioner has disputed the signature in the promissory notes but in his reply notice and also in the written statement, she has stated that she has given a signed blank promissory note. In such circumstances, since the signature in the document is not disputed no purpose will be served for sending the documents to the Forensic Department for comparison and obtaining hand writing expert opinion.

7. Furthermore, once the execution of the promissory note is admitted, as per Section 118 of the Negotiable Instrument Act, the presumption is that it has been executed for valid consideration, so, whether the promissory note is supported by valid consideration and whether the interest has been paid has to be decided only at the time of trial. But as already discussed the signature in the promissory note has not been disputed either in the reply notice or in the written statement. Therefore, no purpose will be served on sending the documents to Forensic Department for obtaining the hand writing expert opinion. Further, P.W.1 was in the witness box for cross examination and hence, only with a view to drag on the proceeding this application has been filed. The Trial Court in paragraph No.7 of its order has stated that the matter was referred for mediation for settlement and then only the application has been filed which shows the malafide intention of the petitioner to drag on the proceeding. Hence, I do not find any reason to interfere with the finding of the Trial Court and the impugned order passed by the Trial Court is hereby confirmed. Consequently, the Civil Revision Petition is hereby dismissed.

8. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

R.MALA. J.,

cse

9.At this juncture, the learned counsel for the respondent/plaintiff sought for early disposal of the suit in O.S.28 of 2013. Considering the request made by the learned counsel for the respondent and since the suit is of the year 2013, the Trial Court is directed to dispose of the suit in O.S.No.28 of 2013 within three months from the date of receipt of a copy of this order.

21.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Sub Court, Mettur.

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