

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 10.02.2015****CORAM:****THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM****C.R.P.(NPD) No.316 of 2015****&****M.P.No.1 of 2015**

Ravi Kumar Chordia	...	Petitioner
	Vs.	
Jhamku Devi Parakh	...	Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and Decreetal order dated 17.09.2014 dismissing C.M.P.No.96 of 2013 in A.S.No.397 of 2012 passed by the Learned XVII Additional City Civil Judge at Chennai to issue supeona to M/s.Dena Bank G.T.Branch Chennai to produce the specimen signature obtained by the bank from the petitioner under SB A/c.No.2213.

For Petitioner : Mr. N.Nagu sha

ORDER

This Civil Revision petition is directed against the order dated 17.09.2014 passed by the Learned XVII Additional City Civil Judge at Chennai, in C.M.P.No.96 of 2013 in A.S.No.397 of 2012.

2. The respondent filed a suit in O.S.No.2109 of 2007 against the petitioner for recovery of a sum of Rs.2,29,150/- based on the promissory notes dated 01.04.2004 and 03.04.2004. The Petitioner/Defendant contested the suit

stating that he did not execute the promissory notes and he never borrowed money from the plaintiff.

3. During trial, the plaintiff has examined one Sumermul Parakh as P.W.1 and marked Exs.A1 and A13. The defendant has not chosen to examine any witness nor marked any documents. CW1 and CW2 were examined and Exs.C1 and C6 were marked.

4. After trial, the suit was decreed on 17.02.2012. Aggrieved by the judgment and decree, the petitioner filed an Appeal in A.S.No.397 of 2012. The petitioner filed I.A.No.96 of 2012 under Order 41 Rule 27 C.P.C to issue supeona to M/s. Dena Bank, George Town Branch, Mint Street, Chennai -1 to produce the specimen signature obtained by the said Bank from him.

5. The application was resisted by the respondent by filing a counter. The Appellate Court dismissed the application. Aggrieved by the order, the present civil revision petition is filed.

6. Mr.N.Nagu Sha, learned counsel for the petitioner would submit that C4 & C5 cheques were not signed by the defendant, but it was signed on his authorised signatory. However, the trial Court, drawing wrong presumption

against the defendant, decreed the suit. The learned counsel further submitted that if the specimen signatures obtained by the bank from the petitioner under SB A/c No.2213 is produced, it will reveal that the signatures in the cheques C4 & C5 and the signatures in the promissory note are not that of the defendant.

7. It is seen that the plaintiff had instituted the suit on 20.03.2007. CW1 & CW2 were examined by the trial Court in the year 2010. In the affidavit filed in support of the application, it is averred that after examination of C.W.1 by the plaintiff counsel, the trial Court has erroneously closed his evidence on 19.10.2010, without giving him opportunity to cross examine the witness.

8. It is not in dispute that the suit was decreed only on 17.02.2012. Despite ample opportunities given by the trial Court, the petitioner has not chosen to file an application for further cross-examination of C.W.1 and for production of specimen signature from the bank.

9. Order 41 Rule 27 of the Civil Procedure Code runs thus;

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if -

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

((aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or)

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

10. It is settled law that for filing an application under Order 41 Rule 27 C.P.C., the appellant has to satisfy the mandatory requirements contained in the provision. In my considered view, the petitioner has not satisfied the requirements. The learned Appellate Judge rightly dismissed the application which does not warrant interference by this Court.

In the result, the civil revision petition is dismissed. It is needless to say that the Learned Appellate Judge shall dispose of the appeal suit on merits without being influenced by any of the observations made in the Civil Revision. No costs. Consequently, connected miscellaneous petition is closed.

10.02.2015

Index : Yes/No
Internet: Yes/No
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To
The Learned XVII Additional City Civil Judge at Chennai.

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K.KALYANASUNDARAM,J.

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