

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.02.2015**

CORAM

**THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR**

**C.R.P.(PD)No.1420 of 2012  
and  
M.P.No.1 of 2012**

Karunanithi

... petitioner

Versus

Paneer Selvam

... Respondent

**Prayer:** Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the Subordinate Judge at Perambalur, dated 16.06.2011 made in I.A.No.120 of 2011 in O.S.No.55 of 2009.

For petitioner : Mrs.R.Sumathy for  
Mr.R.Balasubramanian

For Respondent : Mr.P.Valliappan

**ORDER**

Heard the arguments advanced on both sides.

2. This revision has been preferred against the order of the learned Subordinate Judge, Perambalur dated 16.06.2011, made in I.A.No.120 of 2011 in O.S.No.55 of 2009. The said suit was filed by the respondent herein against the revision petitioner for recovery of money due on the disputed promissory note dated 20.04.2007. The trial had began and the plaintiff's evidence was over. Thereafter, the defendant viz., the revision petitioner chose to file an interlocutory application praying for an order to send the disputed promissory note to a handwriting expert for comparison with the signatures of the revision petitioner/defendant found in vakalat and written statement. The said petition was resisted by the respondent herein/plaintiff contending that the said petition, filed at a belated stage, was nothing but an attempt to protract the case as long as possible. It was also contended that the signatures sought to be used for comparison with the disputed signature were not suitable for comparison as the same were made subsequent to the arising of the dispute and that there was every possibility of the revision petitioner/defendant having disguised the signature in the vakalat and the written statement with the intention of having them compared with the signature found in the disputed promissory note.

3. In support of the contention of the respondent/plaintiff that the petition was belated and it was a ruse for protracting the case, the respondent had also cited the past conduct of the revision petitioner/defendant paving the way for passing of an order setting him *ex-parte* for not filing written statement not once which came to be set aside on an application filed by the revision petitioner and again for the passing of an *exparte* decree which was also set aside on an application filed by him under Order IX Rule 13 C.P.C. The learned trial judge, upon hearing, accepted the above said contentions of the respondent/plaintiff and dismissed the application I.A.No.120 of 2011 in O.S.No.55 of 2009 with costs by order dated 16.06.2011. The interlocutory application filed by the revision petitioner was dismissed on all the three grounds viz., 1) it was belated; 2) it was a ruse for protracting the case; and 3) the documents containing the admitted signature were unfit for being compared with the disputed signature. The said order is impugned in the present revision.

4. Upon hearing both sides and after going through the impugned order and the materials produced in the form of typed set of papers, this Court is not able to find any defect or infirmity in the order passed by the trial Court. Admittedly, the application came to be filed

after the trial had started and after the evidence on the side of the plaintiff came to an end. So the contention of the respondent that the application was belated has got to be accepted. On previous occasions, he suffered an order setting him ex-parte for not filing written statement and then suffered an order of ex-parte decree on his non-appearance. In fact, while filing the application to set aside the ex-parte order passed on the first occasion, the Court ought to have insisted upon filing a written statement. However, leniency was shown and the said petition came to be allowed and the same emboldened the petitioner/defendant to omit to file the written statement within the further time granted after the earlier ex-parte order was set aside. Even within the extended time, the petitioner/defendant did not file written statement and once again he suffered an order setting him ex-parte and an ex-parte decree was passed after conducting ex-parte trial. However, on that occasion also indulgence was shown and he was permitted to file written statement, when he filed an application under Order 9 Rule 13. Thereafter, issues were framed, the suit was listed for trial and at last, the suit was taken up. Till the conclusion of the evidence on the side of the respondent/plaintiff, the petitioner/defendant did not move any application for referring the disputed document to an expert and only when he was called upon to

lead evidence, he chose to file the application in I.A.No.120 of 2011 in O.S.No.55 of 2009. Therefore, the reference to the past conduct was also not improper for non suiting the revision petitioner for the relief sought for in the application.

5. So far as the signatures which were projected as admitted signatures to be used for comparison with the disputed signature are concerned, as rightly contended on behalf of the respondent, they were made subsequent to the filing of suit and in the course of the proceedings and there was every possibility of the revision petitioner/defendant himself having disguised the signatures with the intention of using it at a later point of time for comparing with the signature in the disputed document. Therefore, the rejection of the prayer on the ground that the admitted signatures found in the written statement and vakalat were not suitable for being compared with the signature in the disputed document also cannot be found fault with.

6. For all the reasons stated above, this Court comes to the conclusion that there is no merit in this petition and the same deserves to be dismissed. In view of the fact that the suit is of the

year 2009, the trial Court shall be directed to dispose of the suit at an early date. In the result, this Civil Revision Petition is dismissed. The learned trial Judge is directed to complete the trial and dispose of the suit as expeditiously as possible, in any event, within three months from the date of receipt of a copy of this order. No costs.

10.02.2015

Index : Yes/No  
Internet : Yes/No

vsm

To

The Sub-Court, Perambalur.

**P.R.SHIVAKUMAR, J.**

vsm

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