

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

CORAM

THE HONOURABLE **MR.JUSTICE C.T.SELVAM**

CRP.PD.Nos.4361 to 4366 of 2014

MP.Nos.1 to 1 of 2014

Krishnamoorthy	.. Petitioner in CRP.4361/2014
Muthusamy	.. Petitioner in CRP.4362/2014
Rajkumar	.. Petitioner in CRP.4363/2014
Selvakumar	.. Petitioner in CRP.4364/2014
Mani	.. Petitioner in CRP.4365/2014
Palanivel	.. Petitioner in CRP.4366/2014

Vs

1.P.Mohan
2.Jayanthi
3.Jayavel
No relief against R2 and R3.
Hence R2 and R3 are given up.

.. Respondents in all the revisions

PRAYER : This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order made in IA.No.1 to 6 of 2013 in IP.No.43 to 49 of 2008 respectively, on the file of the learned Subordinate Judge, Rasipuram dated 09.10.2014.

For Petitioners	: Mr.G.Jermiah
For respondents	: Mr.T.Dhanyakumar for R1. R2 and R3 given up.

COMMON ORDER

These civil revision petitions arise against orders of learned Subordinate Judge, Rasipuram passed in I.A.Nos.1 to 6 of 2013 in I.P.Nos.43 to 49 of 2008 on 09.10.2014.

2. Revision petitioners have moved IP.Nos.43 to 49 praying that the first respondent be declared an insolvent. It is common case of all the petitioners that money is due under promissory notes, which the first respondent has failed to honour. First respondent had transferred property standing in his name to his son and daughter and hence the first respondent was liable to be declared an insolvent. As the first respondent disputed the signatures on the promissory notes, the revision petitioners moved IA.Nos.1 to 6 of 2013, for a direction to summon the first respondent before court to obtain his thumb impression and to send the same to the forensic department along with the thumb impressions on the promissory note for comparison and expert opinion. The Court below, under orders dated 09.10.2014, dismissed such applications. Petitioners have moved the present revisions.

3. Heard the rival submissions.

4. In passing an order of dismissal, the Court below has expressed an erroneous view, that the Civil Procedure Code was not applicable to the proceedings and the interlocutory applications were filed to protract proceedings under the Provincial Insolvency Act, 1920. The order of the Court below, challenged herein, is liable to be set aside.

5. Section 5(1) of the Provincial Insolvency Act, 1920 reads thus:-

"5(1). General Powers of Courts :- (1) Subject to the provisions of this Act, the Court in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction."

6. Section 151 CPC which reads as follows would apply to the proceedings :-

"151. Saving of inherent powers of Court :-
Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court."

7. Judgment of this Court reported in **(2010) 3 MLJ 65 – S.Chinnathai V. K.C.Chinnadurai**, in paragraph 18, states thus :-

"18. However, on a consideration of above said legal position, the following principles emerge for consideration.

1.The Civil Court is having jurisdiction to send the document to the Forensic Expert comparing the signatures between the disputed documents with the admitted documents by appointing a Commissioner and get report.

2.When the civil Court is exercising power under Section 73 of the Indian Evidence Act, the civil Court will have to exercise its power under Order 26 Rule 10A of the Code of Civil Procedure instead of invoking section 73 of the Indian Evidence Act.

3.The Advocate Commissioner being an officer of the Court can be asked to take the original document.

4.When the Advocate Commissioner take the original document, then the certified copy of the same will have to be kept under the custody of the Court.

5.The civil court cannot direct the disputed documents to be compared with the vakalat or written statement of a party.

6.When the civil court comes to the conclusion that the power under Order 26 Rule 10A of the code of Civil Procedure should be invoked, then the civil Court shall invoke the same even without an application from the

parties concerned in the interest of justice and in order to solve the dispute between the parties.

7. when a document is sent to an expert it should be sent only to the Government Department Expert and not to a private Expert. While sending a document to an expert, the original of the same has to be sent since it is not possible to compare the xerox copies with the other admitted documents.

8. The civil Court shall not dismiss an application seeking for the examination of the document by an expert on the ground of wrong quoting of provision of law and in such a case, the Court shall exercise under Order 26 Rule 10A of the Code of Civil procedure.

9. The Civil Court shall exercise under Order 26 Rule 10A of the code of Civil Procedure even when a prayer is sought for a direction to summon the expert to the Court for the purpose of examining the document.

10. An application filed under Order 26 Rule 10A of the Code of Civil Procedure will have to be filed at the earliest opportunity in the normal circumstances.

11.However, an application under Order 26 Rule 10A of the code of Civil Procedure cannot be dismissed merely on the question of delay alone, unless the same is wilful and deliberate.”

8. Though there has been some delay in petitioners moving the applications, the Court below, in the interests of justice ought to have allowed the applications. For the aforesaid reasons, the civil revision petitions stand allowed. The Court below shall follow the decision of this Court referred to supra. The Court below is required to dispose of the actions within a period of five months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

02.08.2016.

Index: Yes / No
Internet:Yes / No
tsh

To
The Subordinate Judge, Rasipuram

C.T.SELVAM., J.
tsh

CRP.PD.Nos.4361 to 4366 of 2014

02.08.2016