

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.4020 of 2011

&

M.P.No.1 of 2011

A.C.Kanagaraj

... Petitioner

Vs.

R.Yamuna

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 14.09.2011 passed in I.A.No.412 of 2011 in O.S.No.72 of 2009 on the file of the Subordinate Judge, Udumalpet.

For Petitioner : Mr.S.Ambal Vannan

For Respondents : Mr.M.N.Balakrishnan

ORDER

The fair and decretal order dated 14.09.2011 and made in the application in I.A.No.412 of 2011 in the suit in O.S.No.72 of 2009 on the file of the Subordinate Judge, Udagamandalam are under challenge in this revision.

2. Revision petitioner herein is the defendant in the suit, whereas the respondent is the plaintiff. As it is revealed from the records, the respondent herein had filed the suit in O.S.No.72 of 2009 as against the revision petitioner for recovery of money to the extent of Rs.1,30,865 with interest at the rate of

12% per annum on the principal amount of Rs.1,00,000/-. This suit was contested by the revision petitioner/defendant by filing his written statement.

3. After formulating necessary issues, the trial was commenced. The respondent/plaintiff and the scribe of the suit promissory note were examined as Pws 1 and 2 respectively. After the completion of the recording of evidence on the part of the respondent/plaintiff, on 22.03.2011, 5 witnesses including the revision petitioner/defendant were examined on the side of the defendant. Only at that stage, the revision petitioner/defendant had taken out an application in I.A.No.412 of 2011 under Section 151 of the Code of Civil Procedure to send the promissory note to an expert to find out the age of the ink of disputed signature as well as the contents of the promissory note and to file a report. This petition was resisted by the respondent / plaintiff. After hearing both sides, the learned trial Judge had dismissed the petition on the ground that revision petitioner/defendant had admitted the signature find a place in the suit promissory note and that the particular manufacturing period of the ink, in which the disputed signature was put and the contents of the promissory note were written could not be precisely ascertained. Having been aggrieved by the impugned order dated 14.09.2011, this revision is filed by the revision petitioner/defendant.

4. Heard Mr.Ambal Vannan, learned counsel for the revision petitioner and Mr.M.N.Balakrishnan, learned counsel for the respondent.

5. On a perusal of the plaint as well as the written statement, this Court is able to find that the case of the respondent/plaintiff is that on 07.01.2007, the revision petitioner/defendant in order to meet out his urgent family expenses had borrowed a sum of Rs.1,00,000/- and in witnessing thereof, he had executed a demand promissory note agreeing to repay the above said amount with interest at Rs.1/- per Rs.100/- per mensem, on the same date. Since the revision petitioner/defendant had not repaid the loan amount even after repeated demands, the respondent was constrained to file the above said suit.

6. The revision petitioner/defendant in his written statement, while repudiating other allegations, has specifically admitted that the respondent/plaintiff was doing money lending business and owing to that reason, in the year 1998, for meeting out medical expenses he had borrowed a sum of Rs.10,000/- from the respondent/plaintiff and agreed to repay the same with interest at the rate of Rs.500/- per mensem. While borrowing the above said amount of Rs.10,000/-, the respondent/plaintiff had obtained his signature in white papers and in an unfilled green colour paper and besides this, he had also obtained unfilled blank promissory note. With reference to this admission made by the revision petitioner/defendant, the trial Court has specifically observed that when the signature find a place in the suit promissory note was specifically admitted by the revision petitioner/defendant, the question of sending the disputed promissory note to an expert to find out the age of ink relating to the signature as well as its contents did not arise. Accordingly, the petition filed by the revision petitioner/defendant was dismissed.

7. Mr.Ambal Vannan, learned counsel for the revision petitioner in

support of his contention has made reference to the decision of this Court in ***Elumalai Vs. Subbaramani*** reported in **2011 (3) CTC 616**. In this case a crucial question was arisen as to whether the age of the ink can be ascertained by a forensic expert. In the above cited decision the suit was filed for recovery of money. The defendant therein had filed an application to send the suit promissory note to an expert to ascertain the difference between the inks which were used for putting his signatures in the suit pronote and other signatures contained in the printed form which was a filled up pronote. In the above said case, a learned Judge of this Court has observed that presumption under Section 118(a) of the Act is rebuttable presumption and the accused should be provided with sufficient opportunity before inferring presumption under Section 118(a) of the Act. He has also observed that experts can be directed to ascertain the age of ink as scientific avenues are available for such test. For arriving at this conclusion, the learned Judge has made reference to ***Kalyani Baskar V. M.S.Sampoornam*** reported in **2007 (2) CTC 364 (SC)**.

8. On the other hand, Mr.M.N.Balakrishnan, learned counsel appearing for the respondent has contended that as rightly observed by the learned trial Judge in the impugned order, the revision petitioner/defendant himself had admitted in his written statement that he had signed in blank papers along with two blank signed pronotes. In this connection, he has maintained that when the revision petitioner/defendant himself had admitted the signature found place in the suit promissory note, the rest of the contents ought to have been proved through oral and documentary evidences, for which there was no need to send the

disputed pro-note to an expert to find out or to ascertain the age of ink in which the contents of the disputed document as well as the signature of the defendant were put and written.

9. In support of his contention he has placed reliance upon the decision of this Court in ***Chinnu Vs. Lakshmanan*** reported in **2014 (2) TLNJ 333 (Civil)**. In this case, R.S.Ramanathan.J., Judge of this Court, as he then was, after referring to the decisions reported in **2011 (1) T.N.L.R 470 (Mad) (A.Devaraj Vs. Rajammal)**, **2012 (5) CTC 596 (K.Vairavan Vs. Selvaraj)**, and **2013 (1) MWN (Civil) 681 (S.Sakthivel Vs. Ganesan & Palanisamy)**, has held that having regard to the opinion expressed by the President of Central Forensic Science Laboratory, Hyderabad, no purpose will be achieved by sending the document to ascertain the age of the ink. Further, in the order dated 02.11.2010 rendered by the same judge, in C.R.P.(PD)No.1475 of 2010, it has been observed that along with the disputed document either document containing the admitted signature during the relevant period must be sent to find out the age of the ink and in this case, the revision petitioner wanted to ascertain the age of the ink in the document without producing any contemporaneous document to find out the age of the ink. With this observation, the learned Judge had dismissed the above said revision petition.

10. On coming to the instant case on hand, the learned trial Judge himself has specifically found that when the disputed signature is admitted by the revision petitioner/defendant, the question of sending the disputed promissory

note to a expert to ascertain the age of the ink in which the disputed signature was put does not arise. This Court also finds that the impugned order does not suffer with any infirmity or illegality and therefore the civil revision petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

01.11.2016

gpa

To

The Subordinate Judge
Udumalpet

T.MATHIVANAN.J.,

gpa

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