

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

**CRP (PD) No.1071 of 2013
and
M.P.Nos.1 of 2013 and 1 of 2014**

P.Udayakumar

.. Petitioner

Vs.

1. E.Babu
2. E.Raja
3. E.Ravi

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Order dated 05.01.2013 passed in I.A.No.11397 of 2012 in O.S.No.14485 of 2010 on the file of learned VIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mrs.T.Ragupathi for
Mr.S.Balasubramanian

For Respondents : Mr.G.Mohanarangam

ORDER

The Revision Petitioner/Defendant has filed the present Civil Revision Petition as against the Order dated 05.01.2013 in I.A.No.11397 of 2012 in O.S.No.14485 of 2010 passed by the learned VIII Assistant Judge, City Civil Court, Chennai.

2. The Learned VIII Assistant Judge, City Civil Court, Chennai while passing the Impugned Order on 05.01.2013 in I.A.No.11397 of 2012 in O.S.No.14485 of 2010 (filed by the Petitioner/Defendant) at Paragraph No.9 had interalia observed that “....When the signature in Ex.A6 Promissory Note was admitted by the Defendant, it is the settled position of Law, the burden proof was shifted to the Defendant to prove that it was not executed in favour of the Plaintiffs. The examination of the suit Promissory Note by the Handwriting expert and even it was proved that the suit Promissory Note was not filled by the handwriting of the Defendant, such expert opinion evidence no way useful to the Defendant's case and to decide the execution of Promissory Note by the Defendant. It is case of Plaintiff that the suit Promissory Note was directly executed in their favour. When the Defendant took defence that the suit Promissory Note was delivered to one C.K.Geevar in a signed and unfilled condition, the Defendant has to prove that aspect through

the reliable and satisfactory evidence. It is not legally permissible to prove the above fact by hand writing expert opinion evidence, when the holder was entitled to fill up the blank instrument etc.,” and resultantly dismissed the Application without costs.

2. According to the Learned Counsel for the Petitioner / Defendant, the Impugned Order passed by the Trial Court in I.A.No.11397 of 2012 in O.S.No.14485 of 2010 dated 05.01.2013 is not only a perverse one, but also the same being contrary to Law and probabilities of the case.

3. Expatiating her contention, the Learned Counsel for the Petitioner/Defendant submits that the Trial Court had committed a grievous error among other things observing that “----even it was proved that the suit promissory note was not filled by the handwriting of the Defendant, such expert opinion evidence no way useful to the Defendant's case etc...”, and in short the said observation is a special pleading to the case of the Respondents/Plaintiffs and that too without appreciating the Petitioner/Defendant's case on merits.

4. At this stage, this Court has perused the contents of I.A.No.11397 of 2012 in O.S.No.14485 of 2010 filed by the (Petitioner/Revision Petitioner/Defendant) under Section 45 of the Indian Evidence Act) and is of the considered view that the Revision Petitioner / Defendant had prayed for passing of an Order by the Trial Court to send the Promissory Note, which was marked as Ex.A.6 to the Forensic Science Laboratory, Mylapore herein to ascertain the following:-

a) Whether the Handwriting in Ex.A.6 is that of the Petitioner/Defendant?

b) Whether the said handwriting had found a place on the Promissory Note and also whether the filling of the Promissory Note and signature were made on same pen and same day?

c) Whether the filling of the Promissory Note and signature were made on the same day ?

5. The principle stand taken on behalf of the Revision Petitioner/Defendant is that the 1st Plaintiff had entered into the witness box and adduced evidence on behalf of the Respondents/Plaintiffs as P.W.1 and in fact, in his cross-examination had asserted that the Petitioner/Defendant only filled up the contents of the Promissory Note dated 19.05.2008 before them which fact can very well be ascertained if

the Promissory Note, marked as Ex.A6 was sent to the Forensic Science Department to ascertain the handwriting found on the Promissory Note etc.,

6. In the counter to I.A.No.11397 of 2012 in O.S.No.14485 of 2010 (filed by the Respondents/Plaintiffs) it was stated that the suit was filed by the Respondents/Plaintiffs on 08.12.2010 and that the I.A.No.11397 of 2012 was filed by the Petitioner/Defendant belatedly during the month of July 2012 and also as an after thought when the suit was in Part-Heard stage. Moreover, in the counter it was also mentioned that the Revision Petitioner/Defendant admitted his signature in the Promissory Note and when execution of the Promissory Note was admitted by the Revision Petitioner/Defendant, then, it would not be open to him to agitate the matter. Continuing further, on behalf of the Respondents/Plaintiffs it is brought to the notice of this Court that the evidence on the side of the Respondents/Plaintiffs was over and the Revision Petitioner/Defendant had filed I.A.No.11397 of 2012 in O.S.No.14485 of 2010 after the evidence of P.W.1 was completed.

7. It is to be noted that the 'Holder' of a Promissory Note, Bill of Exchange or cheque means any person entitled in his own name to the

decision thereof and to receive or recover the amount due therefrom from the parties concerned. Further, the presumption under Section 118 of the Negotiable Instruments Act, 1881 continued in all its rigour until the contrary was proved. Also that in a case where the Defendant has admitted the execution of the Negotiable Instrument, it is entirely upon him to establish 'Lack of Consideration' and there is no burden on a Plaintiff to establish the aspect of 'Adequate Consideration'.

8. Ordinarily, it is for the Plaintiff to prove the due execution of Promissory Note by the Defendant and only then, presumption under Section 118 (c) of Negotiable Instrument Act, 1881 can be invoked. In a case where the Defendant admitted the execution of Negotiable Instrument, then, there is no onus on the part of Plaintiff to prove adequate consideration, as opined by this Court.

9. At this stage, this Court worth recollects and recalls the decision of **T.N.Unnikrishnan V. T.K.Ramankutty & Another reported in 2006 CRI. L.J. at Page 4700 and at Special Page 4701** whereby and whereunder in Paragraph No.2, it is observed and held as follows:-

“2. As regards the second ground now it is now trite that when the cheque is admittedly signed by the drawer irrespective of the fact that, that had been filled up by any

other person putting the date and amount, the drawer cannot get absolved of the liability under Section 138 because he has to rebut the statutory presumption against him by adducing further evidence that it was not one given in discharge of the liability that he owed to the payee either in whole or in part. Such an evidence is absent in this case. Therefore, the second ground on which the acquittal was recorded by the Court below is not sustainable.”

10. If a blank cheque was issued by the drawer and after signing, then, Section 20 of the Negotiable Instruments Act would have no application. The blank Cheque could be filled up by a holder thereon which will be a valid instrument in the eye of Law, in the considered opinion of this Court. Further, if an old ink was used by a person to fill up the contents of cheques, no useful purpose would be served by getting it analysed by an Expert. As a signature in a given case on a cheque was admitted by the concerned party, then there would be no need to send the disputed cheque to an Expert for obtaining his opinion.

11. As far as the present case is concerned, one cannot brush aside a very vital fact that even after the suit, Promissory Note, Ex.A.6 was sent to the Forensic Science Department to be examined by a handwriting expert and also in case, if the report opines that the suit

Promissory Note contents were not filled by the Petitioner / Defendant by his own handwriting and that the contents of the Promissory Note were filled up either by one of the Respondents/Plaintiffs or their Agent/Men etc., then, these things would not in any way, in the considered opinion of this Court would improve/heighten the case of the Revision Petitioner/Defendant.

12. In the instant case, the stand of the Respondents/Plaintiffs is that the Suit Promissory Note Ex.A.6 was executed in their favour by the Revision Petitioner/Defendant and when it is the clear cut case of the Revision Petitioner/Defendant that the suit Promissory Note was delivered to one C.K.Geevar in a signed and unfilled fashion, then, it is for the Revision Petitioner/Defendant to establish his case/version/stand by adducing cogent, coherent, reliable and satisfactory evidence. To put it succinctly, the holder of a 'Bill of Exchange' under the Negotiable Instruments Act, 1881 in Law is competent / entitled to fill up the blanks in an instrument and viewed in that perspective, the I.A.No.11397 of 2012 in O.S.No.14485 of 2010 filed by the Revision Petitioner / Defendant is not per se maintainable. Resultantly, the Civil Revision Petition fails.

13. In the result, the Civil Revision Petition is dismissed leaving the parties to bear their own costs. The I.A.No.11397 of 2012 filed by the Revision Petitioner/Defendant before the Trial Court is dismissed. The Order dated 05.01.2013 passed by the Trial Court in dismissing the I.A.No.11397 of 2012 in O.S.No.14485 of 2010 is confirmed by this Court for the reasons assigned in this Revision. Since the suit Promissory Note Ex.A.6 is dated 19.05.2008 and the suit in O.S.No.14485 of 2010 is of the year 2010 on the file of the Trial Court and nearly five years have gone by after filing of the suit and also this Court taking note of the yet another fact that the suit is in part-heard stage, in the interest of equity, fair play, good conscience and even as a matter of prudence, directs the learned VIII Assistant Judge, City Civil Court, Chennai to take earnest endeavour to dispose of the main suit within a period of three months from the date of receipt of copy of this Order (of course after providing adequate opportunities to the respective parties by adhering to the principles of natural justice) The parties are directed to lend their assistance and co-operation in regard to the completion of the proceedings in the main suit, within the time determined by this Court. Liberty is granted to the respective parties to raise all factual and legal pleas before the Trial Court in O.S.No.14485

of 2010 and the Trial Court shall permit the respective parties in this regard. Consequently, connected Miscellaneous Petitions are closed.

02.03.2016

Index : Yes/No

Internet : Yes

ssd

To

1. The learned VIII Assistant Judge,
City Civil Court, Chennai
2. The Registrar (Judicial)
High Court, Madras
(To watch and report)

M.VENUGOPAL, J.

ssd

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