

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE MS. **JUSTICE R.MALA**

C.R.P. PD.NO.102 of 2016

and C.M.P.No.569 of 2016

Balasubramanian ... Petitioner/Defendant

Vs

Selvam ... Respondent/Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 22.09.2015 in I.A.No.420 of 2015 in O.S.No.28 of 2008 on the file of the Sub Court, Neyveli.

For Petitioner : Mr.P.Seshadri

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 22.09.2015 in I.A.No.420 of 2015 in O.S.No.28 of 2008 on the file of the Sub Court, Neyveli.

2.The respondent herein as a plaintiff filed a suit in O.S.No.28 of 2008 for recovery of money due on promissory note dated 13.11.2004 stating that the revision petitioner/defendant borrowed a sum of Rs.2,00,000/- by agreeing to repay the same with interest at the rate of 12% per annum. But he did not repay the same. After issuance of notice, the plaintiff/respondent filed the suit. The revision petitioner/defendant filed a written statement stating that he has not executed any promissory note, which is forged one. Therefore, the defendant/revision petitioner has filed an application in I.A.No.107 of 2014 to send for his service register and the same was allowed. Subsequently, the defendant filed I.A.No.7 of 2014, the said application was closed stating that no signature of the defendant is available in NLC. Now the defendant/revision petitioner has filed the present application in I.A.No.420 of 2015 under Order 26 Rule 9 C.P.C. to compare the disputed signature of the defendant in promissory note with the signature to be obtained from him in the open Court and to send the same for obtaining expert's opinion. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the defendant.

3.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length and perused the typed set of

papers.

4.It is pertinent to note that the provision mentioned in the application is not a correct provision of law. The revision petitioner ought to have filed the present application under Section 45 of Evidence Act and under Order 26 Rule 10 C.P.C. for appointment of Advocate Commissioner to send the document to the Forensic and Science Department for comparison.

5.It is a settled principle of law that misquoting of provision of law is not a ground for dismissal.

6.Even though the revision petitioner has misquoted the provision of law, now this Court has to decide the matter on merits. According to the learned counsel for the revision petitioner, the defendant/revision petitioner has already filed I.A.No.107 of 2014 to send for his service register, which was allowed on 12.09.2014. Subsequently, they received a letter from N.L.C. stating that no signature of the defendant is available. Therefore, the defendant/revision petitioner has come forward with the present application.

7.It is well settled dictum of the Honourable Apex Court that the document contains admitted signature during the contemporary period is necessary to compare the disputed signature with that admitted signature. In the case on hand, no such document is available to the defendant/revision petitioner. Further, the signature in vakalat and written statement cannot be looked into. Under such circumstances, no purpose would be served for obtaining signature of the defendant before the trial Court and sending the same to the Forensic and Science Department for comparison with the disputed signature in the promissory note dated 13.11.2004.

8.Considering the aforestated circumstances of the case, I am of the view, the trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

9.In the result, the Civil Revision Petition stands dismissed. Since the suit is of the year 2007, the trial Court is directed to dispose of the suit within a period of three months from the date of receipt of

a copy of this order. No costs. Consequently, connected Miscellaneous
Petition is closed.

25.01.2016

Index: Yes/No

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To

The Sub Court,
Neyveli

R.MALA, J

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