

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

CRP (PD) No.2419 of 2016
& CMP.No.12480 of 2016

N.S.Palanisamy
Proprietor,
Suraj Process,
Kallikadu Thottam,
KVR Nagar,
Karuvampalayam,
Tirupur – 641 604.

.. Petitioner

Vs.

M/s.Sree Devi Chemicals,
Represented by its Power Agent
B.Thiagarajan, S/o.Balasubramaniam,
D.No.14, Rajarao Street,
Tiruppur Town,
Tiruppur District.

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the CRP., setting aside the fair and decretal order of the learned I Additional District Court, Tirppur, dated 28.06.2016 in I.A.No.319 of 2016 in O.S.No.224 of 2013 and to dismiss the said I.A.,

For Petitioner : Mr.T.M.Hariharan
For Respondent : Mr.I.C.Vasudevan

ORDER

The respondent filed a suit in O.S.No.224 of 2013 on the file of the District Court, Tiruppur against the petitioner claiming a sum of Rs.18,72,224/- with interest at 24% per annum.

2. The suit was contested by the petitioner by filing written statement. The petitioner has taken up a specific contention that the respondent agreed to pay 15% commission, and the same would come to a sum of Rs.11,07,390/-.

3. The respondent examined the Power Agent as PW1. While cross-examining PW1, the petitioner produced a document dated 11.09.2009. The document was marked as Ex.B1 through PW1.

4. The respondent after marking Ex.B1, filed an application for sending the document for expert opinion. The said application was not pressed.

5. Subsequently, the respondent filed an application in I.A.No.319 of 2016 to eschew the document marked as Ex.B1. This application was allowed by the learned trial Judge. Feeling aggrieved, the petitioner is before this Court.

6. I have heard the learned counsel appearing for the petitioner and the counsel for the respondent.

7. The suit in O.S.No.224 of 2013 was filed by the respondent through the Power Agent. The Power Agent armed with the Power of Attorney, entered the witness box and tendered evidence. The petitioner marked EX.B1 through PW1.

8. The respondent thereafter filed an application in I.A.No.213 of 2016 to send Ex.B1 for expert opinion. The respondent for reasons best known, not pressed the application, and as such it was dismissed as withdrawn. The said order has become final. It was only thereafter, the respondent had filed a strange application to eschew the evidence insofar as Ex.B1 is concerned.

9. The trial Judge notwithstanding the fact that the document was marked through the witness examined by the respondent, allowed the said application.

10. I have perused the evidence of PW1. PW1 admitted the document dated 11.09.2009. In case, the respondent is having a case that the signature in the said document was forged, the proper remedy was to send it for expert opinion. However, without taking such a course, the respondent for reasons best known has not pressed the application. Such being the factual position, the learned trial Judge was not correct in eschewing the documentary evidence which was marked through PW1.

12. In the result, the order dated 28.06.2016 in I.A.No.319 of 2016 in O.S.No.224 of 2013 is set aside.

13. In the upshot, I allow the Civil Revision Petition. No costs.
Consequently, connected miscellaneous petition is closed.

08.09.2016

Index : Yes/No

ds

K.K.SASIDHARAN, J.

ds

08.09.2016

CRP (PD) No.2419 of 2016
& CMP.No.12480 of 2016