

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.2456 OF 2016
AND CMP NO.12791 OF 2016

V.G.Srinivasan

... Petitioner

Versus

Dr.S.Parthasarathy

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed by the learned V Assistant Judge I/c. II Assistant Court, City Civil Court, Chennai, in I.A.No.17836 of 2015 in O.S.No.9001 of 2008 dated 15.06.2016.

For Petitioner : Mr.K.Azhagu Raman
For Respondent : No appearance

ORDER

The petitioner filed a suit in O.S.No.9001 of 2008 before the II Assistant Judge, City Civil Court, Chennai, on the basis of a promissory

note.

2. The suit was contested by the respondent by filing written statement, wherein it was stated that the promissory note was given only as a security. Thereafter, the matter was posted for evidence.

3. The respondent after cross examination of P.W.1 filed an application in I.A.No.17836 of 2015 to send the promissory note for expert opinion. The application was opposed by the petitioner.

4. The learned Trial Judge allowed the application on the ground that such indulgence would enable the respondent to prove his case. The said order is now under challenge in this Civil Revision Petition.

5. The learned counsel for the petitioner contended that no such defense regarding execution of the promissory note was taken by the respondent in the written statement. The Trial Court was therefore not correct in sending the promissory note for expert opinion.

6. None appears for the respondent in spite of printing his name in the cause list after service.

7. The suit was based on a promissory note. The respondent in the written statement contended that the suit promissory note was given only as a security. According to the respondent, it was the prevailing business practice to return the promissory note after making payment. Therefore, it is clear that there was no challenge to the execution of promissory note. The only defense taken by the respondent appears to be the entrustment of promissory note as security.

8. The respondent after the commencement of trial filed the application in I.A.No.17836 of 2015 by contending that though the promissory note was signed by him, the fact remains that the recital in the document was not written by him. The learned Trial Judge allowed the application with an observation that the prayer was in tune with the defense taken in the written statement.

9. I have perused the written statement. There is no such contention taken by the respondent in the written statement. The only defense taken was that the promissory note was given only as a

security. Such being the factual position, the learned Trial Judge was not correct in allowing the application in I.A.No.17836 of 2015.

10. The suit being one based on a promissory note. It is for the petitioner to plead and prove that it was executed by the respondent for valuable consideration.

11. The Trial Court notwithstanding the statement contained in the written statement with regard to the entrustment of promissory note as security, allowed the application on a misconception. I am therefore of the view that the order passed by the learned Trial Judge is liable to be set aside.

12. The order dated 15.06.2016 in I.A.No.17836 of 2015 is set aside. The application in I.A.No.17836 of 2015 is restored to file.

13. The learned Trial Judge is directed to dispose of the application in I.A.No.17836 of 2015 afresh, on merits and as per law, as expeditiously as possible.

14. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected civil miscellaneous petition is closed.

09.11.2016

TK

To

The V Assistant Judge I/c. II Assistant Court
City Civil Court,
Chennai.

K.K.SASIDHARAN, J.

TK

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