

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2611 of 2016 and
CMP.No.13416 of 2016

N.Ramaduraisamy

...Petitioner

versus

C.Kumarathinam

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.06.2016 passed in I.A.No.809 of 2015 in O.S.No.44 of 2012 on the file of Sub-Court, Dharapuram.

For Petitioner : Mr.A.K.Sridharan

ORDER

This Civil Revision Petition is directed against the order dated 15 June 2016 in I.A.No.809 of 2015 in O.S.No.44 of 2012 on the file of learned Sub-Judge, Dharapuram, dismissing the application filed by the petitioner to send the revenue stamp to Nazik for the purpose of ascertaining the year in which the stamp was printed by the Reserve Bank.

2. The respondent filed a suit against the petitioner on the strength of a Promissory Note. The petitioner in his written statement filed in December 2012 denied the execution of the Promissory Note. Thereafter, the petitioner filed an application in I.A.809 of 2015 to send the stamp affixed on the Promissory Note for expert opinion to determine the year of its printing. The said application was opposed by the respondent by filing counter.

3. The learned Trial Judge considered the application and opined that it was only to delay the adjudication of the suit, the petitioner has come up with the application to send the stamp alone for verification without making a prayer for comparison of his signature. The application was dismissed. Feeling aggrieved, the petitioner is before this Court with this Civil Revision Petition.

4. The learned counsel for the petitioner contended that the petitioner has taken up a specific contention in his written statement with regard to the execution and as such, it was his responsibility to prove that it was not actually executed by him. According to the learned counsel for the petitioner, the learned trial Judge erred in dismissing the

application on the ground that the prayer was only to send the stamp for verification.

5. There is no dispute that in the written statement filed by the petitioner, he has taken up a contention with regard to execution. According to the petitioner, he has not executed the Promissory Note in question. Such being the factual position, the burden of proof is on the respondent to prove that it was actually executed by the petitioner.

6. However, very strangely, three years after filing the written statement, the petitioner filed an application not for sending the said document for comparison of his signature on the stamp. It was specifically for ascertaining the age of the stamp. The learned Judge rightly dismissed the said application on the ground that it was only to drag on the matter.

7. The burden of proof in a matter of this nature lies on the respondent. In case, the petitioner has taken up a contention regarding non-execution of the document in question, necessarily, the respondent has to prove that it was executed by him. The petitioner, for reasons best known failed to make a prayer for sending the suit document for

examination of his signature. The application to send the stamp for verification was only an after thought. The learned Judge was therefore perfectly correct in dismissing the application. I do not find any error or illegality in the said order warranting interference by this Court by exercising revisional jurisdiction under Article 227 of the Constitution.

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

07.09.2016

Index:Yes/No

svki
To

The Sub-Court,
Dharampuram

K.K.SASIDHARAN, J.

(svki)

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