



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2016

CORAM:

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P(PD) (MD)Nos.1178 and 1179 of 2016

and

C.M.P (MD)Nos.5790 and 5791 of 2016

M.C.Thenmozhi

..Petitioner in both petitions

-vs-

M.Parameswari

.. Respondent in both petitions

PRAYER in C.R.P(MD)No.1178 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order and Decretal order dated 22.03.2016 made in I.A.No.3 of 2016 in O.S.No.42 of 2011 on the file of Additional District Court, Ramanathapuram.

PRAYER in C.R.P(MD)No.1179 of 2016: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order and Decretal order dated 22.03.2016 made in I.A.No.4 of 2016 in O.S.No.42 of 2011 on the file of Additional District Court, Ramanathapuram.

For Petitioner

in both Petitions : Mr.V.Sitharanjandas

COMMON ORDER

These revisions have been filed against the orders passed in I.A.Nos.3 and 4 of 2016 in O.S.No.42 of 2011 by the Additional District Munsif Court, Ramanathapuram.

2. The respondent instituted the suit against the petitioner in O.S.No.42 of 2011 for recovery of Rs.14,18,834/- based on the four promissory notes. The suit is being contested by the petitioner denying her signature in the promissory notes. The applications in I.A.Nos.3 and 4 of 2016 came to be filed by the petitioner to re-open the case and send the promissory notes for expert opinion. The trial Court dismissed the petitions. Against that orders, the present revisions have been filed.

<https://hcservices.courts.gov.in/hcservices/> Mr.V.Sitharanjandas, learned counsel for the petitioner would submit that the petitioner, who is the defendant in the suit, had already disputed her signature in the written statement



itself, specifically stating that the plaintiff, who was familiar with defendant, has created the signature and to prove the defence, a report of an expert is necessary. However, the applications were dismissed mainly on the ground that they were filed belatedly.

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4. Placing reliance upon the judgment reported in AIR 2008 A.P 163 (Janachaitanya Housing Ltd., vs. M/s Divya Financiers) and 2016(2) MWN (Civil) 1 (Bande Siva Shankara Srinivasa Prasad vs. Ravi Surya Prakash Babu and others), the learned counsel submitted that the application to send a document for opinion of the handwriting can be filed in a later stage. In AIR 2008 A.P 163 (Janachaitanya Housing Ltd., vs. M/s Divya Financiers), the Hon'ble Division Bench has held as follows:-

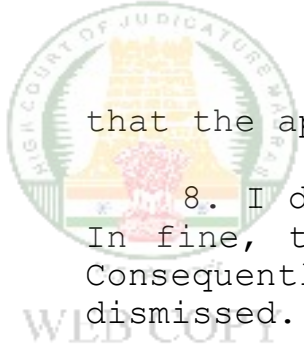
"16. For the reasons aforementioned, we answer the reference thus : "No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case."

The same was confirmed by the Full Bench of Andhra Pradesh reported in 2016(2) MWN (Civil) 1 (Bande Siva Shankara Srinivasa Prasad vs. Ravi Surya Prakash Babu and others).

5. It is seen from the records that the suit was instituted in the year 2011. The evidence of the parties were over and when the suit was posted for arguments, the petitioner filed two applications in I.A.Nos.40 and 41 of 2014 for re-opening of the case and for re-examination of witnesses. Those petitioners were allowed. Again the suit was posted for arguments on 23.11.2015. On that day, the petitioner was not ready to argue the case and after taking time filed the present applications on 06.01.2016.

6. It is true that no time limit could be fixed for filing application under Section 45 of the Indian Evidence Act for sending document for opinion of the handwriting expert. However, the parties cannot be permitted to move the application at their chose and at any stage. Even the Division Bench of Andhra Pradesh High Court has observed that the dictum is to be applied depending upon the facts and circumstances of the each case. In my considered view, the decisions do not support the case of the petitioner.

7. In the case on hand, the suit came to be filed in the year 2011, as already observed in the year 2014, the suit was listed for evidence and after lapse of two years of closures of the evidence, the present applications were filed. The learned trial judge, in my view rightly, dismissed the application observing



that the applications are filed only to protract the proceedings.

8. I do not find any merits in these Civil Revision Petitions. In fine, this Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS)

To

The Additional District Court, Ramanathapuram.

+2cc to Mr.V.Sitharanjandas, Advocate, Sr.Nos.30964 & 30965

skn

JM/ARK-PK/02.08.2016/3P-4C

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