



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.540 of 2016 and
C.M.P(MD).No.2334 of 2016

S. Athistam : Revision Petitioner

Vs.

Indian Bank,
rep. by its Regional Manager,
Theni District. : Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated, 10.02.2016 made in I.A.No.94 of 2016 in O.S.No.93 of 2009 on the file of Sub Court, Theni District.

For Petitioner : Mr. T. Lajapathi Roy

ORDER

The Civil Revision Petition is filed against the fair and decreetal order, dated 10.02.2016 made in I.A.No.94 of 2016 in O.S.No.93 of 2009 on the file of Sub Court, Theni District.

2. The revision petitioner is the second defendant in O.S.No.139 of 1996, subsequently re-numbered as O.S.No.93 of 2009, on the file of the Subordinate Court, Theni District. The first respondent filed suit for recovery of money. The petitioner filed written statement and contested the suit. After evidence let in on behalf of the respondents and petitioner herein and marked the documents, the petitioner filed I.A.No.94 of 2016 for permission to prosecute the then Branch Manager Ramachandran, Cashier Balakrishnan and Manager Suriyanarayanan, who gave evidence in the suit and for return of Rs.8,38,372/- together with interest. According to the petitioner, he has repaid two sums i.e a sum of Rs.10,000/-, on 16.04.1992 and a sum of Rs.10,664/-, on 30.08.1992 as evidenced by Exs.B9 and B12. The then Manager and Cashier without giving credit to this amount swindled the same. In the circumstances, he has filed the present application.

3. The respondent Bank filed counter affidavit and denied all the allegations made by the petitioner. According to the first respondent, the petitioner has filed this application only to drag on the proceedings. The suit is of the year 1996 and subsequently, it was re-numbered as O.S.No.93 of 2009, and this Court directed for speedy disposal. The petitioner has not claimed relief, now, claimed in the written statement or in the two additional written statements. Having failed to claim relief in the written statement and additional written



statements, it is not open to the petitioner to claim the said relief after 20 years of filing suit. The learned Judge considered all these facts and materials on record dismissed the application filed by the petitioner with cost.

4. Against that dismissal, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel for the revision petitioner submitted that the learned Judge failed to see that PW.1 witness examined on behalf of the Bank, admitted whenever any amount is paid receipt will be issued immediately. Exs.B9 and B12 are the receipt issued by the Bank. The learned Judge failed to see that only after examination of DW.2, Handwriting expert, the petitioner came to know that signature in Exs.B9 and B12 are that of petitioner. The learned Judge failed to see that it is for the petitioner who filed Civil Revision Petition for speedy disposal of the suit. He further submitted that the cost awarded by the learned counsel for the petitioner may be set aside.

6. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. From the materials available on record it is seen that the petitioner is claiming Rs.8,38,372/-, which according to the petitioner, he has paid directly to the then Manager and Cashier. They issued receipt, but, did not give credit to the same in the loan account of the petitioner. They have mis-appropriated the amounts paid by the petitioner. The petitioner has not claimed this amounts in the Written statement and has not paid necessary Court fee. However, the petitioner has come out with the present application after 20 years of filing suit for recovery of money, after witnesses have been examined and trial almost completed. The petitioner also seek permission to prosecute the then Manager and Cashier and present Manager. The learned Judge rejected this contention on the ground that in the Civil proceedings the petitioner cannot claim permission to prosecute the officials of the Bank. The learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

8. Taking into consideration, the portion of the order, awarded cost of Rs.500/- is set aside and in all other aspects, the order of learned Judge is confirmed.

9. In the result, the Civil revision petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(R)

/True copy/



To
The Subordinate Judge, Theni District.

+1cc to Mr.T.Lajapathi Roy Advocate in SR.No.13328

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