

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

CRP PD Nos.1229 and 1230 of 2014
and M.P.Nos. 1 and 1 of 2014

Lakshmi .. Petitioner in both C.R.Ps

VS

T.V.Ravi .. Respondent in both C.R.Ps

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal orders dated 08.01.2014 made in I.A.Nos.803 and 804 of 2013 in O.S.No.207 of 2007 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner : Mr. P.Dinesh Kumar
in both C.R.Ps for Mr.V.P.Karthikeyan

For Respondent : Mr.A.V.Arun
in both C.R.Ps

COMMON ORDER

The plaintiff has filed the above revision petitions challenging the orders allowing the applications to re-open and re-call P.W.1, filed by the defendant.

2. The suit is filed by the plaintiff for recovery of money based on a promissory note dated 11.07.2004. After completion of the plaintiff's evidence, the suit was posted for defendant's side evidence. At that stage, the applications to re-open and re-call P.W.1, was filed by the defendant.

3. The reason given by the defendant is that he had filed an application under Section 45 of the Indian Evidence Act in I.A.No.235 of 2010 for sending the signature found on the promissory note to the Forensic Department, to obtain a report from an expert. The said application was allowed and a report was also filed. Based on the said report, the defendant wanted to examine the plaintiff and hence, he sought for re-opening and

recalling P.W.1. The learned District Munsif, Gobichettipalayam had allowed the applications to re-open and re-call P.W.1 only for the purpose of marking the report of the expert and did not permit cross examination of P.W.1.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

5. The objection of the revision petitioner is that the report of the expert can be marked as defendant's side document or it can be marked as Court document, for which purpose, the evidence of P.W.1 need not be re-opened.

6. The application to obtain the opinion of the expert, was allowed at the instance of the defendant and the report has also been obtained. If the report is not marked as a Court document, it can be marked through the plaintiff and no prejudice would be

caused to the defendant, as the report has to be taken on record. The learned trial Judge has granted permission only for marking of the document and further examination by the defendant was disallowed. The plaintiff cannot have any grievance over the same.

7. In this regard, it is relevant to place reliance on a decision of this Court reported in **2016 (3) CTC 178** in the case of **M.VARADHARAJAN -VS-BALASUBRAMANIAN** and in para 17, this Court held as follows:-

17. "In this regard, I should state that the opinion of an Expert as enumerated in Section 45 of the Evidence Act, has been declared as a relevant fact and therefore, it is admissible. Such an Expert Opinion, though admissible, should be admitted in evidence first. If the opinion of an Expert is in writing. it should be admitted in evidence, by properly proving the same. Such proof is possible only by examining the author of the document, who falls within the ambit of Section 45 of the Evidence Act. If only the expert is examined in respect of his opinion, it will be possible for the adverse party to challenge the correctness of the same. If the expert has not come to the Box to give evidence and if

the Expert Opinion is not proved properly, then, the same cannot be relied at all by the Court. In other words, a document which has not been brought on record by way of evidence cannot be considered by the Court for any purpose."

8. In view of the above decision, unless the document is marked in evidence, even the expert cannot be summoned into Court to give his opinion on the same. Hence, there is no infirmity in the order passed by the learned trial Judge, which does not warrant any interference by this Court. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently connected miscellaneous petition are closed.

07.02.2017

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Index: yes/No

Internet: yes

To

The District Munsif Court,
Gobichettipalayam.

PUSHPA SATHYANARAYANA,J.,

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