

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.316 of 2013
& M.P.No.1 of 2013

M.Murugesan

.. Petitioner

Vs.

1.S.Thangavadivel

2.S.Kumar

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 11.12.2012 made in I.A.No.229 of 2012 in O.S.No.94 of 2011 on the file of the Principal District Court, Salem.

For Petitioner : Mr.V.V.Sairam

For Respondents : Mr.V.Lakshminarayanan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 11.12.2012 made in I.A.No.229 of 2012 in O.S.No.94 of 2011 on the file of the Principal District Court, Salem.

2. The petitioner is the plaintiff and respondents are the defendants 2 and 3 in O.S.No.94 of 2011 on the file of the District Court, Salem. The petitioner filed suit for recovery of money based on promissory note. According to the petitioner, the second respondent as partner of the first defendant borrowed a sum of Rs.8,00,000/- from the petitioner on behalf of the first defendant partnership firm and on his behalf and executed a promissory note as a partner of first defendant partnership firm. The respondents, who are the partners did not repay the amount borrowed and hence, the petitioner has filed suit for recovery of amount. The first respondent filed written statement on 08.11.2011 and the same was adopted by the second respondent. According to the respondents, they have not borrowed any amount from the petitioner and executed the suit promissory note and the petitioner has fabricated the promissory note. Based on these pleadings, the trial commenced. The petitioner was examined as P.W.1 in chief and the suit was posted for cross examination. At that stage, the respondents filed I.A.No.229 of 2012 for a direction to the petitioner to examine himself as well as the attesting witnesses and scribe of the promissory note on the same day.

3. According to the respondents, if attesting witnesses and scribe are examined on different dates, they will be tutored and the respondents would be put to irreparable loss.

4. The petitioner filed counter affidavit and opposed the said application. According to the petitioner, he has not decided whom to examine as witness and the respondents cannot dictate the order of examination of witnesses by the petitioner and whom to examine as witness. The respondents have filed the application on misapprehension and prayed for dismissal of the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, accepted the contention of the respondents and allowed the application.

6. Against the said order dated 11.12.2012 made in I.A.No.229 of 2012, the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

8. The contention of the learned counsel for the petitioner is that the learned Judge failed to see that the prayer in I.A.No.229 of 2012 is hypothetical and not practical. The learned Judge erred in holding that there is scope for tutoring the witnesses to be examined by the petitioner. It is not for the respondents to dictate the petitioner as to how and when the witnesses to be examined. These contentions are without merits.

9. It is the specific case of the respondents that they have not borrowed any money from the petitioner and have not executed any promissory note accepting the said borrowing. According to the respondents, the suit promissory note is a fabricated document. In view of the said stand taken by the respondents, they have come out with the present application for examination of attesting witnesses and scribe of the promissory note on the same day so as to avoid any tutoring by the petitioner. The petitioner in the counter affidavit has not stated that whether he is going to examine the attesting witnesses and scribe or not. On the other hand, he has taken an evasive stand that he will decide whom to be examined as further witnesses, only after his evidence is completed.

10. As per the Order XVI Rule 1 C.P.C., the parties must furnish in Court a list of witnesses whom they propose to examine either to give evidence or to produce documents and obtain summons to such persons for their attendance in Court. The list must be furnished on or before the date fixed by the Court and not later than 15 days after settlement of issues. A party who obtain any summons for the attendance of any person shall file an application in Court stating that the purpose for which the witness is proposed to be summoned.

11. As per the Order 16 Rule 1(3) of C.P.C., a party failed to furnish the list or proposals to summon any other person not mentioned in the list already furnished in Court, the Court may permit a party to furnish the same, if such party shows sufficient reason for omission to mention the said witnesses in the list already furnished. In the present case, the petitioner has not filed any such list and is also not willing to disclose whether he is going to examine the attesting witnesses or scribe of the promissory note. In view of the evasive stand taken by the petitioner, the contention of the respondents that the petitioner would tutor the attesting witnesses and scribe, has considerable force. The learned Judge considering

these facts and allowed the application by giving cogent and valid reason. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 11.12.2012.

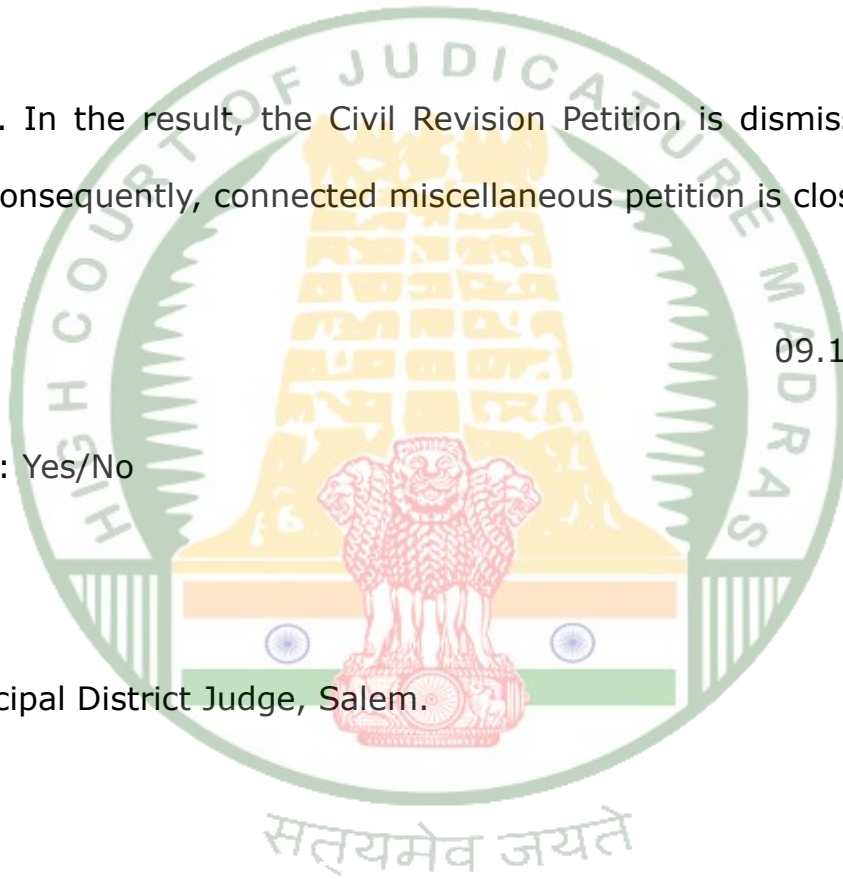
12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.10.2017

Index : Yes/No
dm/kj

To

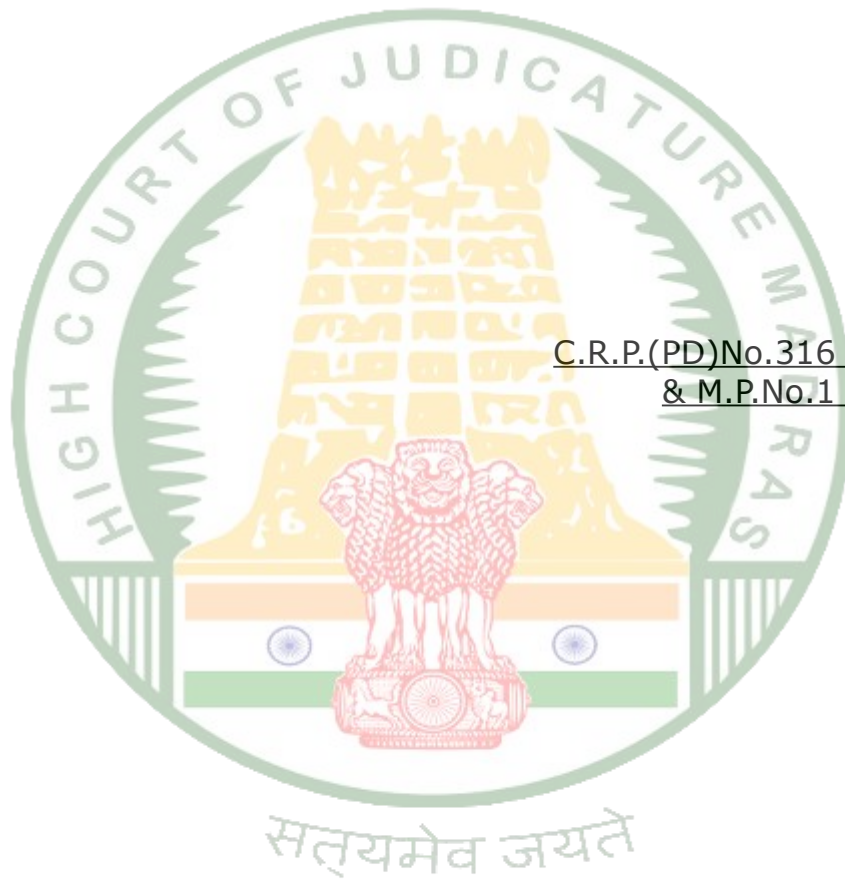
The Principal District Judge, Salem.



WEB COPY

V.M.VELUMANI, J.

dm/kj



C.R.P.(PD)No.316 of 2013
& M.P.No.1 of 2013

WEB COPY 09.10.2017