

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4336 of 2008

T.R.Sukumar

.. Petitioner

Vs.

A.Gandhi

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the judgment and decretal order dated 23.07.2007 made in N.T.A.No.11 of 2006 in suit No.259 of 2003 on the file of the Small Causes Court No.III, Chennai.

For Petitioner : No Appearance

For Respondent : Mr.N.A.Kareem

ORDER

The Civil Revision Petition is filed against the judgment and decretal order dated 23.07.2007 made in N.T.A.No.11 of 2006 in suit No.259 of 2003 on the file of the Small Causes Court No.III, Chennai.

2. The petitioner is the plaintiff and respondent is the

defendant in Suit No.259 of 2003 on the file of the IXth Small Causes Court, Chennai. The petitioner filed suit for recovery of money, based on the promissory note dated 19.02.2000. According to the petitioner, the respondent borrowed a sum of Rs.9,000/- from the petitioner and agreed to repay the said amount with interest at the rate of 12% per annum. In evidence of borrowing, the respondent executed a demand promissory note on the same day. The respondent did not pay the amount borrowed in spite of repeated demands and reminders made by the petitioner. Hence the petitioner filed the above suit for recovery of money. The respondent filed written statement and denied execution of promissory note in respect of passing of consideration.

3. Based on the pleadings, necessary issues were framed before the Small Causes Court, Chennai. The petitioner was examined as P.W.1 and marked one document as Ex.A1/promissory note, dated 19.02.2000. The respondent examined himself as D.W.1 and did not mark any documents. Vakalat filed by the respondent was marked as Court document Ex.C1.

4. The learned IX Judge, Court of Small Causes, Chennai, considering the pleadings, oral and documentary evidence, decreed

the suit. The learned Judge comparing the signature found in the Vakalat and Ex.A1/promissory note held that the respondent executed the promissory note dated 19.02.2000.

5. Against the said judgment and decree dated 08.12.2004 made in Suit No.259 of 2003, the respondent filed an appeal in N.T.A.No.11 of 2006 on the file of the III Small Causes Court, Chennai.

6. The learned Appellate Judge considering all the materials on record and judgment of the Trial Court, confirmed the findings of the learned Trial Judge that respondent only executed promissory note/Ex.A1, dated 19.02.2000. The learned Appellate Judge allowed the appeal on the ground that the petitioner has not proved payment of consideration to the respondent. The learned Appellate Judge came to such finding on the ground that the petitioner has not examined scribe or attesor to the promissory note and set aside the judgment and decree of the Trial Court, dated 08.12.2004.

7. Against the said judgment and decree dated 23.07.2007 made in N.T.A.No.11 of 2006, the present Civil Revision Petition is filed by the petitioner/plaintiff.

8. There is no representation on behalf of the petitioner. Heard the learned counsel for the respondent and perused the materials available on record.

9. The only point to be decided in the Civil Revision Petition is whether the suit promissory note Ex.A1 dated 19.02.2000 is supported by consideration. Both the Courts below, based on the pleadings, oral and documentary evidence held that the respondent executed the suit promissory note. Both the Courts have rejected the contention of the respondent that he has not executed the suit promissory note and held that his signature is found in Ex.A1. The suit promissory note is genuine one. Once execution of promissory note by the respondent is proved, the presumption is whether consideration is paid to the respondent. The said presumption is rebuttable and it is for the respondent to prove that no consideration was paid to him. In the promissory note Ex.A1, it has been mentioned that the respondent has received Rs.9,000/- from the petitioner for payment of property tax and for his family expenses.

10. The Appellate Court wrongly placed onus on the petitioner to prove the payment of consideration. Having held that the

respondent has executed promissory note/Ex.A1, the Appellate Court ought to have considered whether the respondent has rebutted the presumption with regard to payment of consideration. The petitioner has stated that one of the witnesses to the promissory note is the person brought by the respondent, when he borrowed money and executed promissory note. This fact was not denied by the respondent. The respondent ought to have examined the said witness to prove that no consideration was paid to him on the day. In view of the irregularity committed by the learned Appellate Judge, the judgment and decree dated 23.07.2007 is set aside and the judgment and decree of the Trial Court dated 08.12.2004 is restored.

11. In the result, the Civil Revision Petition is allowed. No costs.

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Index : Yes/No

dm/kj

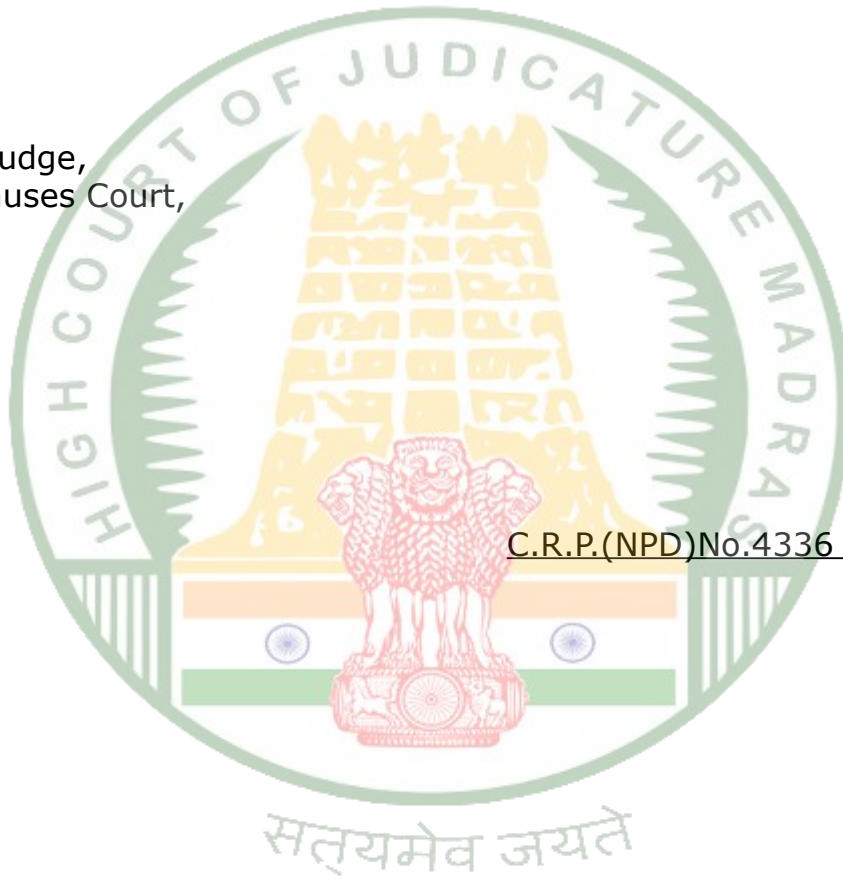
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V.M.VELUMANI, J.

dm/kj

To

The III Judge,
Small Causes Court,
Chennai.



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