



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) Nos.1070 & 1071 of 2014 (PD)

and

M.P. (MD) No.1 of 2014

1.Peer Mohamed, S/o.Kadar Mydeen
2.Seyed Majeed, S/o.Jalal
Rep. through his Power Agent
Jalal, S/o.Diwan Mohideen. .. Petitioners/Petitioners/Plaintiffs
in both the C.R.Ps.

Vs.

1.Beema John, W/o.Habeebulla
2.T.Usain Kaja
3.Seyed Ali Fathima, W/o.J.Sheik Mydeen
4.Abdul Wahab, S/o.Mohamed Hanifa
5.Anarkali, D/o.Dr.Mohamed Ali
6.Gowtharnisha, D/o.Dr.Mohamed Ali .. Respondents/Respondents/
Defendants in both the C.R.Ps.

Prayer in both the C.R.Ps.: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.11.2013, made in I.A.Nos.188 and 189 of 2013 respectively in O.S.No.29 of 2012 on the file of the III Additional District & Sessions Court, Tirunelveli.

For Petitioners : Mr.H.Arumugam -both CRPs

For R1 and R5 : No Appearance in CRP 1070/14

R1,3 and 4 : No Appearance in CRP 1071/14

For R2 to R4 : Mr.S.Palani Velayutham in CRP 1070/14

For R5 & R6 : Mr.A.Arumugam
for M/s.Ajmal Associates
(in CRP 1071/14)

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decretal order dated 05.11.2013, made in I.A.Nos.188 and 189 of 2013 in O.S.No.29 of 2012 on the file of the III Additional District and Sessions Court, Tirunelveli.



2. Since the issues involved in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by this common order.

3. The petitioners are the plaintiffs and the respondents are the defendants in the suit in O.S.No.29 of 2012 on the file of the III Additional District and Sessions Court, Tirunelveli. The petitioners filed the suit for specific performance. The respondents filed their written statements and are contesting the suit. Trial commenced. The evidence on behalf of the petitioners and the respondents were closed and the suit was posted for arguments. At that stage, the petitioners have filed I.A.Nos.188 and 189 of 2013 to re-open the case and for permission to re-examine the Official of H.D.F.C. Bank, Vannarpettai, Tirunelveli and to mark the documents through him.

4. According to the petitioners, they filed the suit for specific performance. They issued 5 current-date cheques on 02.11.2009. In the written statement and deposition, the respondents denied that the petitioners issued 5 current-date cheques in a single day, i.e., on 02.11.2009. According to the petitioners, the contention of the respondents that the petitioners issued post-dated cheques is not correct. In order to prove that the petitioners issued only current-date cheques and to mark the cheques through the Bank Official, the petitioners have filed the above two applications.

5. The respondents 1, 5 and 6 did not file counter.

6. The respondents 2, 3 and 4 filed counter affidavit and denied the averments made in the affidavit. They stated that only to drag on the proceedings, the petitioners have come out with the present applications. P.W.1 already filed Bank statement and it has been received by the Court, but it was not marked. Without marking the said statement, it is not necessary to summon the Bank official for marking the documents and prayed for dismissal of both the applications.

7. The learned III Additional District and Sessions Judge considering the averments made in the affidavit and the counter affidavit and also considering the materials available on record, dismissed both the applications, by common order dated 05.11.2013. The learned III Additional District and Sessions Judge considered the contention of the second respondent that from the account statement, it cannot be found that Cheque Nos.0263765 to 0263768 have been issued in the name of the second respondent - T.Usain Kaja on 02.11.2009, 02.11.2009, 03.11.2009, 04.11.2009 and 06.11.2009 and on perusal of the account statement filed by the petitioners, it is seen that the above cheques were issued for Rs.4,000/- each. The learned III Additional District and Sessions Judge has held that when the respondents accept the transaction as found in the account statement, it is not necessary

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Petitions

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Petitions

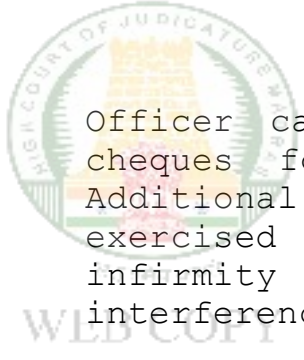
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Petitions



Officer can only speak about the date of presentation of the cheques for collection. The reasoning of the learned III Additional District and Sessions Judge, is valid and she has exercised her power conferred on her properly and there is no infirmity or irregularity in the said order warranting interference by this Court.

14. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To
The III Additional District & Sessions Judge,
Tirunelveli.

Copy to:
The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.H.Arumugam, Advocate, SR.No:4328
+1cc to Mr.S.Palanivelayutham, Advocate SR.No:4054

smn2
AE/JM/15.02.2017/4P/5C

Common order in
C.R.P. (MD) Nos.1070 & 1071 of 2014 (PD)
and
M.P. (MD) No.1 of 2014
24.01.2017