



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.533 of 2016 (PD)

and

C.M.P(MD)No.2265 of 2016

Johnsi .. Petitioner/Respondent/Defendant
Vs.
Kumar ..Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decretal order dated 03.02.2016 passed in I.A.No.67 of 2016 in O.S.No.131 of 2011 on the file of the Subordinate Judge, Valliyoor and allow the present Civil Revision Petition.

For Petitioner : Mr. R.Subramanian

For Respondent : Mr.A.B.Natarajan

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Fair and Decretal order, dated 03.02.2016 passed in I.A.No.67 of 2016 in O.S.No.131 of 2011 on the file of the Subordinate Judge, Valliyoor.

2.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed suit in O.S.No.131 of 2011 before the Sub Court, Valliyoor, for recovery of money based on Ex.A1. The petitioner denied the signature in Ex.A1. The respondent filed I.A.No.67 of 2016 for appointment of Advocate Commissioner for obtaining opinion from the handwriting expert by comparing the signature in Ex.A1 with admitted signature in summons, written statement and deposition. The petitioner opposed the said application on the ground that those documents are not contemporaneous documents. The contemporaneous document of Ex.A1 only can be sent for comparison. The signature in Ex.A6 is only a Xerox copy and signature in the Xerox copy cannot be compared for obtaining expert opinion.

3.The learned Judge considering the averments made in the affidavit and counter affidavit and perusing the materials on record, allowed the application relying on the judgment reported in **2008(4) L.W. 687 (Damara Venkata Murali Krishna Rao vs. Gururajappa) and 2011(1) MWN (Civil) 428 (Mehboob Bi vs. Natesa Padayachi) .**



4. Against the said order, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the petitioner has denied the signature in the written statement itself. The respondent on earlier occasion filed I.A.No.994 of 2014 and the said application was dismissed as not pressed. Now, for the very same relief, the petitioner cannot maintain the present petition. The disputed signature can be compared only with contemporaneous document and cannot be compared with subsequent document. There is no date mentioned in Ex.A1. The petitioner has filed an application at the stage of argument, only to drag on the proceedings.

6. The learned counsel for the respondent submitted that when there is no contemporaneous admitted signature is available, disputed signature can always be compared with subsequent admitted signature. There is no delay in filing the application. It is not the intention of the respondent to drag on the proceedings. The judgment relied on by him before the learned Judge and submitted that there is no contemporaneous admitted signature, disputed signature can be compared with subsequent admitted signature. The learned Judge has given valid and sufficient reason for appointment of Advocate Commissioner for obtaining opinion from the handwriting expert.

7. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the entire materials on record.

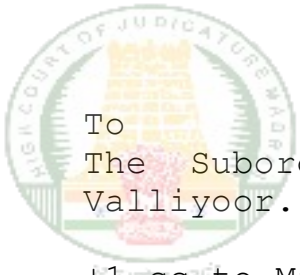
8. The petitioner disputed the signature in Ex.A1. The respondent has taken out the application for obtaining opinion from the handwriting expert for comparison of disputed signature with admitted signature found in the subsequent document. In the judgment reported in **2011(1)MWN (Civil) 428 (Mehboob Bi vs. Natesa Padayachi)** it is held that when contemporaneous admitted signature is not available, Handwriting expert opinion can be obtained with the signature in the subsequent document. The learned Judge has rightly exercised his power properly and given reason for the said conclusion. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

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

Sd/-

Assistant Registrar(AS)

/True copy/



To
The Subordinate Judge,
Valliyoor.

+1 cc to Mr.R.Subramanian, Advocate in SR.No. 3318

+1 cc to Mr.A.B.Natarajan, Advocate in SR.No. 3247

C.R.P (MD) No.533 of 2016 (PD)
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