

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.325 of 2018
and CMP.No.1771 of 2018

Ezhilmaran

.. Petitioner

Vs

Michael

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in IA.No.29 of 2017 in IA.No.53 of 2016 in OS.No.01 of 2016 dated 26.10.2017 on the file of the learned Principal District and Sessions Judge, Ariyalur.

For Petitioner : Mr.S.Parthasarathy

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ORDER

According to the revision petitioner, the respondent has filed a suit in OS.No.1 of 2016 for recovery of money on the basis of

alleged promissory note executed by the revision petitioner. The revision petitioner denied the execution of alleged promissory note. Therefore, the revision petitioner filed an application in IA.No.53 of 2016 and send the document for comparison of signature of the revision petitioner for expert opinion. The aforesaid application was allowed and the revision petitioner was directed to submit the document signed by him during the relevant period within 15 days. But the revision petitioner failed to comply with the condition of the order of the court below. Therefore, the revision petitioner filed the present application to send the cheques issued to one, Saravanan on 14.11.2012 and 16.11.2012 of the City Union Bank, Ariyalur and the stating the reasons that the revision petitioner has not produced the same within the stipulated time and after lapse of stipulated period, the revision petitioner has come with the instant petition. However, the revision petitioner has stated that after sincere efforts, he found the documents with the signature during the period mentioned by the court. The court below has dismissed the said application by holding that no sufficient cause has been assigned by the revision petitioner. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that if the said application is allowed, no prejudice would be caused to the respondent.

3. Heard the learned counsel for the revision petitioner and perused the materials available on record.

4. This Court has already considered and decided in the case of **P.Stanley Buck Vs. D.Govindaraj reported in (2009) 7 MLJ 908**, paragraph Nos.26, 27 and 30 of which are extracted below:-

"26. In **Thiruvengadam Pillai Vs. Navaneethammal and another, 2008 (4) SCC 530: (2008) 2 MLJ 1115**, the issue before the Supreme Court was regarding the observation made by the First Appellate Court about the failure on the part of the Defendants to prove that her signature was forged. By concurring with the views of the High Court, in setting aside the findings of the trial Court, the Supreme Court held thus at p.1124 of MLJ:-

"17. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first Appellate Court reversed it by wrongly placing onus on the Defendants. Its observation that when the execution of an unregistered document put

forth by the plaintiff was denied by the Defendants, it was for the Defendants to establish that the document was forged or concocted, is not sound proposition. The first Appellate Court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the Defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first Defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses...."

27. In **P.Sood & Co., (Manufacturing) represented by its Partner, Krishna Kumar Sood Vs. Peerchand Misrimalji Bhansali, Prop, Meena Metals, (2005) 2 MLJ 603: (2005) 3 CTC 12,**

Division Bench of this Court opined that when the defendant denied the Signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending the document to hand writing expert.

30. In State (Delhi Administration) v. Pali Ram., AIR 1979 SC 14, the Supreme Court opined that it would be permissible for the Trial Court to send the disputed document for expert opinion even without an application. The relevant paragraph would read thus :-

"Even where no such expert witness is cited or examined by either party, the court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the court to compare the two writings and arrive at a proper conclusion." सत्यमेव जयते

5. Hence, apart from the reasons stated by the court below, when the defendant has denied the execution of pro-note, it is the burden of the plaintiff to prove the genuineness of the document. Therefore, there is no warrant to interfere with the orders passed by the court below and the orders passed by the court below is confirmed.

6. The Civil Revision Petition is dismissed. Consequently,
the connected miscellaneous petition is closed. No costs.

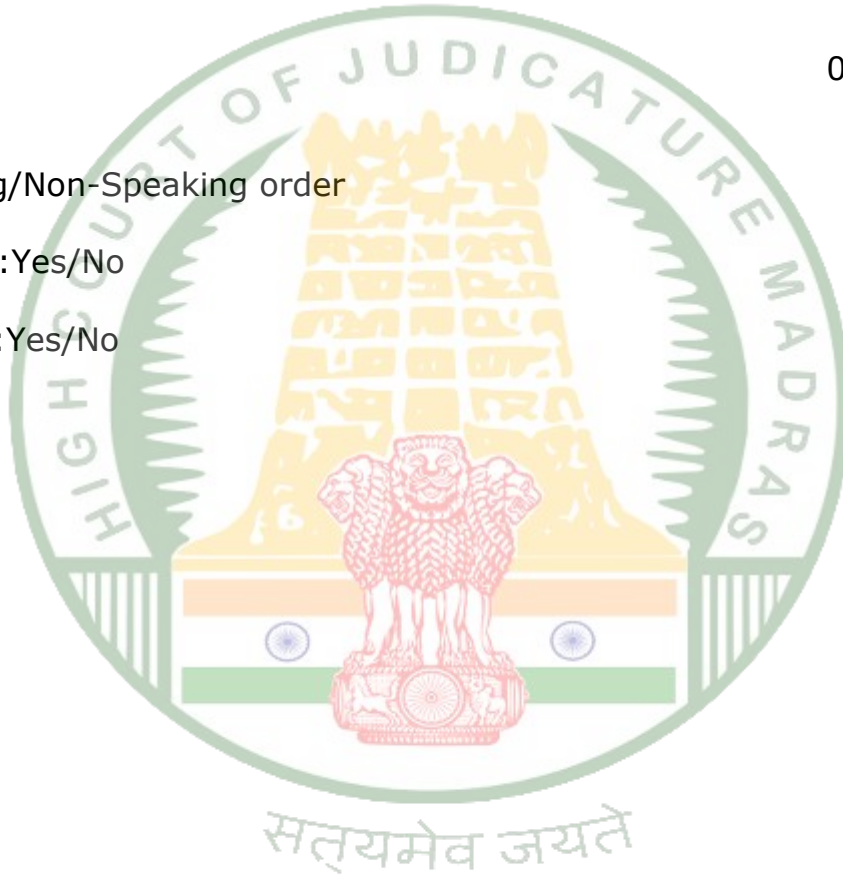
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Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

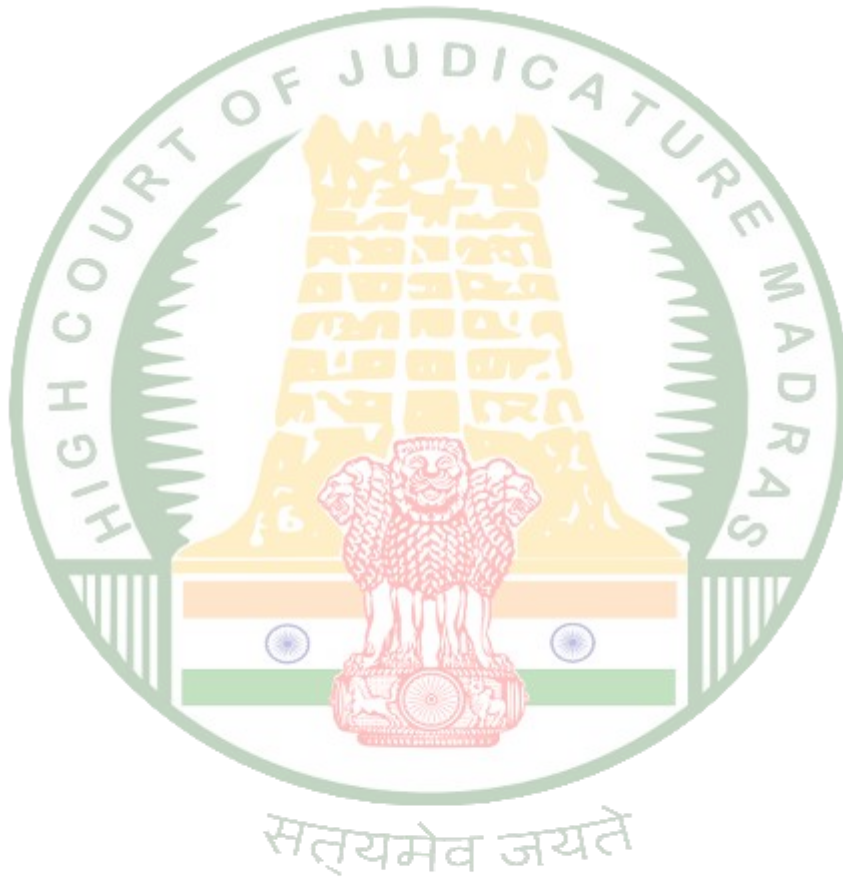
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To

The learned Principal District and Sessions Judge,
Ariyalur.



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D. KRISHNAKUMAR J.,

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