

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 426 of 2018
and
C.M.P. No.2271 of 2018

M.Veeraraghavan

.. Petitioner

Vs

1. Syndicate Bank,
Rep. by its Senior Branch Manager,
George Town Branch, A.V.C. Plaza,
No.168, Govindappa Naicken Street,
Chennai-600 001.

2. D.Kumar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 12.12.2017 passed in I.A.No.3925 of 2017 in O.S.No.2728 of 2011, on the file of the XVIII Assistant City Civil Court at Chennai.

For Petitioner

: Mr.D.Senthil Kumar

ORDER

The revision petition arises against the Fair and Decretal Order dated 12.12.2017 passed in I.A.No.3925 of 2017 in O.S.No.2728 of 2011, on the file of the XVIII Assistant City Civil Court at Chennai.

2. The 1st respondent filed a suit in O.S. No. 2728 of 2011 seeking recovery of money against the petitioner. Written statement was filed by the petitioner denying the entire loan and disputing his signature. Pending the above suit, the petitioner filed an application to appoint an Advocate Commissioner to carry his signature for forensic science department for comparing the signature in the documents filed by the Bank along with his admitted signatures. The said application was allowed by the court below. However, the petitioner was not able to collect the documents of the period 2004 to 2006 as directed by the court below and hence the aforesaid application was closed. Subsequently, the petitioner collected various documents and filed I.A. No.3925 of 2017 under Order VIII Rule 1-A of CPC seeking to receive the petition mentioned documents for being sent to the Forensic

Department, for comparison with his disputed signature in the General Agreement dated 30.12.2006. The court below dismissed the aforesaid application holding that the petitioner is not entitled to get any relief at that stage.

3. The learned counsel for the petitioner would submit that the petitioner denies the signature in the disputed documents of the bank and to prove the same, the instant application was filed, relying upon certain documents. Without considering the same, the court below has dismissed the application and hence the present revision petition is filed by the petitioner before this Court.

4. Considered the submissions of the learned counsel for the petitioner and perused the materials on record.

5. Following the principles laid down by the Hon'ble Supreme Court, this Court has held as follows, in the case of ***P.Stanley Buck Vs. D.Govindaraj reported in (2009) 7 MLJ 908.*** In the relevant paragraphs 26 & 27 it is observed as follows:

"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."

6. In the light of the aforesaid judgment, it is for the plaintiff to prove the documents. Further, the reasons stated by the court below is that the petitioner has filed a second application relying upon the earlier documents and the trial of the suit has already been commenced. Hence, this Court is not inclined to interfere with the order of the court below and the revision petition is liable to be dismissed. At this stage, learned counsel for the petitioner seeks liberty to file an application for marking of documents. Without expressing any opinion on merits of the case, liberty is granted to the petitioner to file an application, if permissible under law.

7. The Civil Revision Petition is dismissed, with the above observation. Consequently, the connected Miscellaneous Petition is closed. No costs.

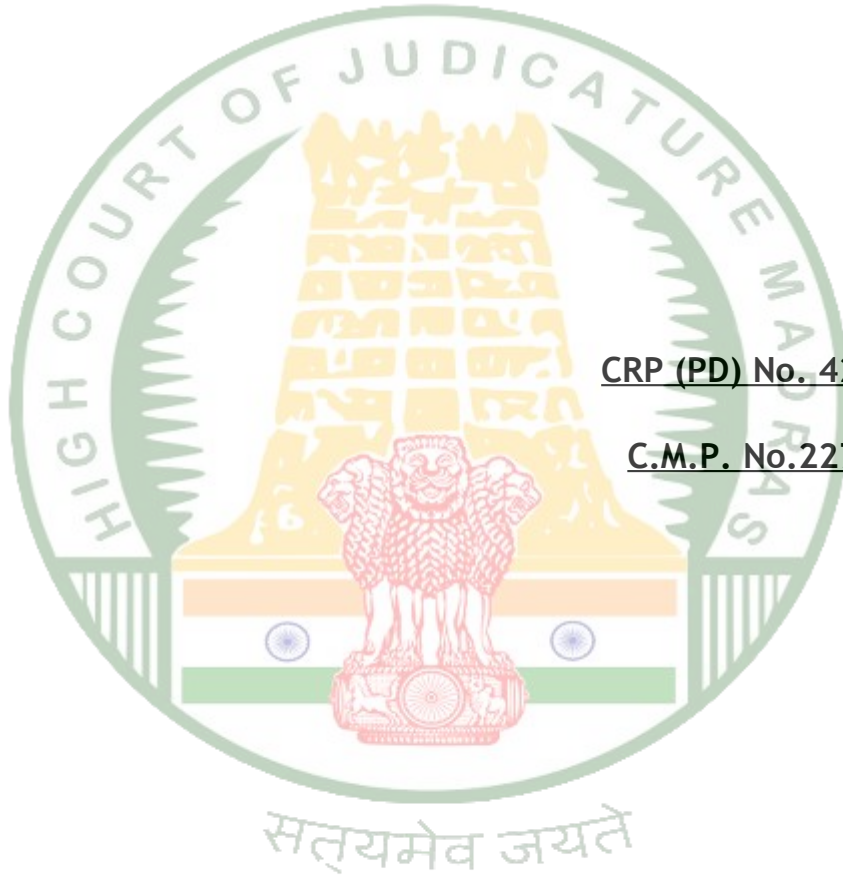
14.02.2018

Index : Yes/ No
Speaking order/ Non speaking order

To
The XVIII Assistant City Civil Court,
Chennai.

D. KRISHNAKUMAR J.,

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