

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

The HONOURABLE **MS. JUSTICE V.M.VELUMANI**

C.R.P.(NPD)No.64 of 2018
and C.M.P.No.245 of 2018

K.Shanthi

.. Petitioner

Vs.

N.Ravichandran

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.03.2012 made in I.A.No.1541 of 2011 in O.S.No.302 of 2007 on the file of the Principal Sub Court, Tiruppur.

For Petitioner : Mr.S.Saravanan

For Respondent : Mr.P.Kalimuthu

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 19.03.2012 made in I.A.No.1541 of 2011 in O.S.No.302 of 2007 on the file of the Principal Sub Court, Tiruppur.

2.The petitioner is the defendant and respondent is the plaintiff in O.S.No.302 of 2007 on the file of the Principal Sub Court, Tiruppur. The respondent filed said suit for recovery of money. According to the respondent, the petitioner borrowed money from the respondent and did not repay the same and hence, he filed the suit. The petitioner filed written statement and denied the borrowing. The trial commenced and respondent marked documents to substantiate his case. The petitioner disputed her signature in Exs.P1, P6 and P7, which were marked by the respondent. The petitioner filed two applications in I.A.No.1541 of 2011 to send the signature found in the cheques for comparison, with the admitted signature of the petitioner, by handwriting expert to ascertain the age of the ink, the period from which the said cheques were executed and I.A.No.1542 of 2011 to send for the records containing the specimen signature of the petitioner relating to Bank account No.CC39 at Tiruppur Branch of Punjab and Sind Bank.

3.According to the petitioner, Exs.P1, P6 and P7 are not executed by her, her manager has forged her signature and respondent is taking advantage of the same. The said exhibits were written by different persons in different periods and different inks.

4.The respondent filed counter and denied all the averments made by the petitioner and contended that the petitioner has not made any averments in the written statement as alleged in the affidavit filed in support of the present application. The petitioner has not filed any admitted signature for comparison. The respondent has explained about the documents during his cross-examination. The petitioner has filed the present application only to drag on the proceedings and prayed for dismissal of the application.

5.The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed I.A.No.1541 of 2011 on the ground that the petitioner has not stated about the difference in the signature, difference in ink, date of execution of cheques in the written statement and when the suit was posted for evidence on her behalf, the petitioner has come out with the present application only to drag on the proceedings and the petitioner has not filed any admitted signature in the registered document.

6.Against the dismissal of said order dated 19.03.2012 made in I.A.No.1541 of 2011 in O.S.No.302 of 2007, the present Civil Revision Petition is filed by the petitioner/defendant.

7.The learned counsel for the petitioner contended that in paragraph Nos.12 and 14 of the written statement, the petitioner has stated that her manager forged her signature in the cheques and handed over to the respondent. She has also stated that the documents filed by the respondent are forged ones, the petitioner has not received any money from the respondent and did not give any cheque to the respondent. The learned counsel has also contended that the petitioner filed I.A.No.1542 of 2011 to send for her admitted signature in Bank account No.CC39 at Tiruppur Branch of Punjab and Sind Bank. The said application was allowed on 19.03.2012 and in view of the same, the learned Judge without properly appreciating the averments made in the written statement as well as order dated 19.03.2012 made in I.A.No.1542 of 2011 dismissed the present application on 19.03.2012.

8.The learned counsel for the respondent contended that the petitioner did not come out with the present application immediately after filing written statement. Only after evidence of respondent was closed and when the suit was posted for evidence on behalf of the petitioner, she has come out with the present application to drag on the proceedings. She has not filed any document. By order dated

19.03.2012, the present application was dismissed by the learned Judge. The petitioner has filed present Civil Revision Petition only on 13.11.2017, which clearly shows the intention of the petitioner is only to drag on the proceedings and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

10. From the materials available on record, it is seen that the learned Judge dismissed the application on the ground that the petitioner has not taken the present stand in the written statement and not filed any admitted signature along with the application. Both the reasonings of the learned Judge are erroneous. The learned counsel for the petitioner has referred to paragraph Nos.12 and 14 of the written statement, wherein the petitioner stated that the suit documents are forged ones, she has not borrowed any money from the respondent and did not execute the suit documents. The application in I.A.No.1542 of 2011 filed by the petitioner to send for her admitted signature in Bank Account No.CC39 at Tiruppur Branch of Punjab and Sind Bank, was allowed by the same Judge on 19.03.2012 calling for the said document.

11.For the above reason, the impugned order of the learned Judge is set aside and I.A.No.1541 of 2011 is remanded back to the trial Court. The learned Judge is directed to appoint an Advocate as Commissioner to get handwriting expert's opinion with regard to the genuineness of the petitioner's signature found in Exs.P1, P6 and P7 by comparing the same with her admitted signature in Bank account No.CC39 at Tiruppur Branch of Punjab and Sind Bank and complete the process within a period of two months from the date of receipt of a copy of this order. The petitioner has to bear the remuneration and other expenses of the Advocate Commissioner to be appointed by the learned Judge. The relief sought for by the petitioner with regard to ascertaining the age of the ink, the period from which Exs.P1, P6 and P7 executed, is rejected. On receipt of report from the Advocate Commissioner, as the suit is of the year 2007, the learned Judge is directed to dispose of the suit within a period of three months from the date of receipt of report.

12.In the result, the Civil Revision Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

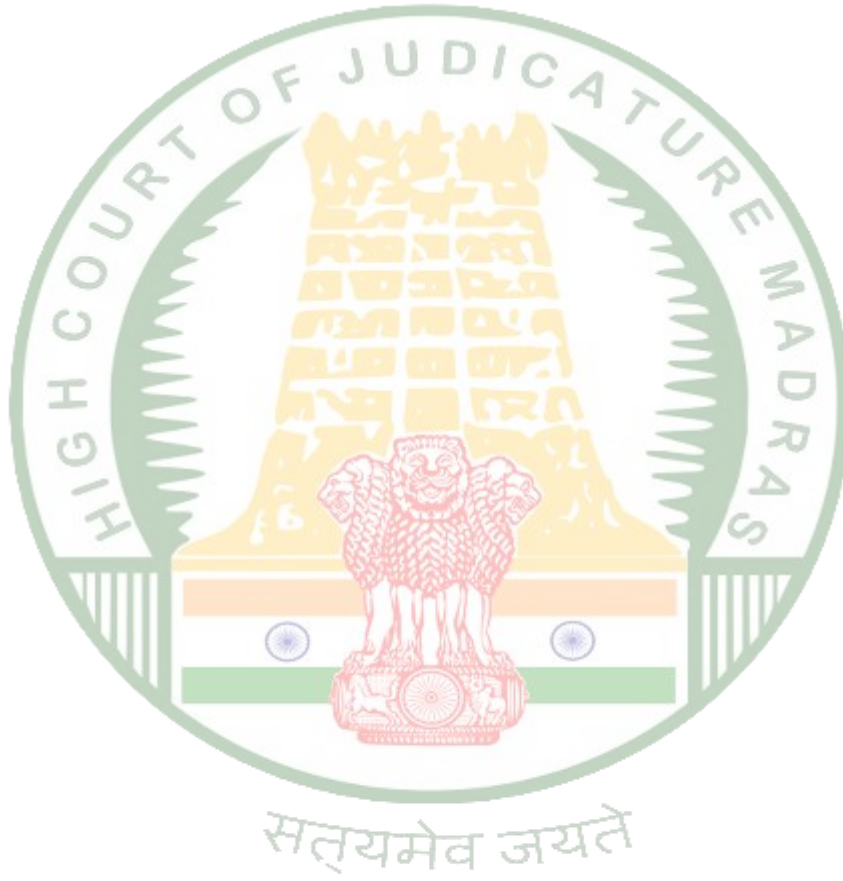
27.06.2018

Index:Yes/No

kj

To

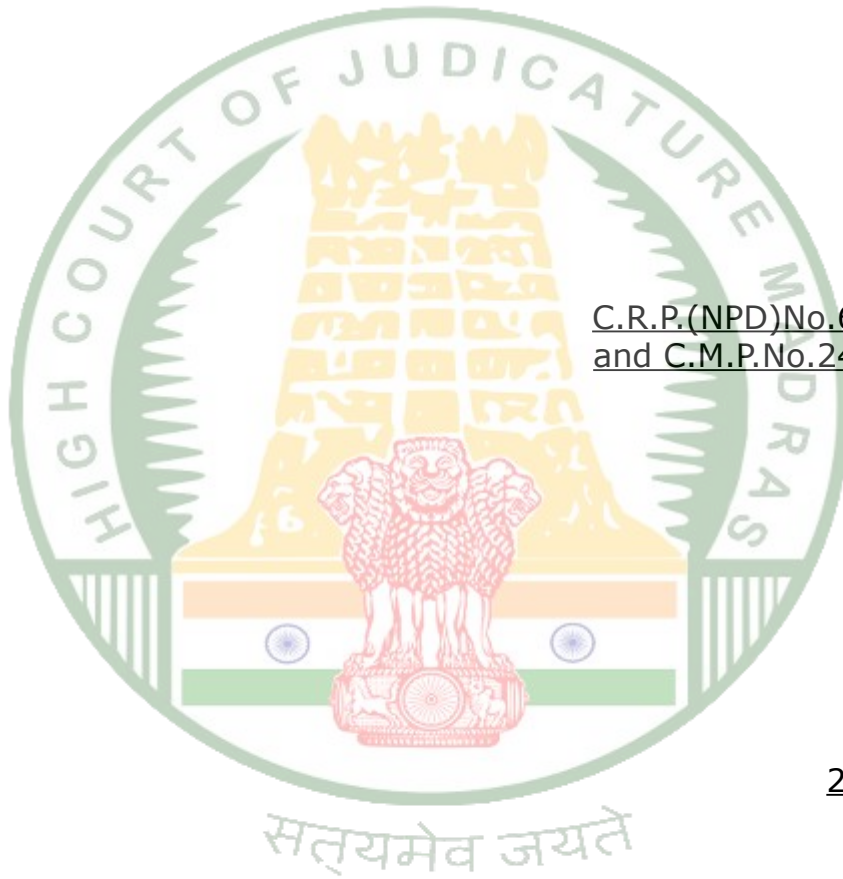
The Principal Subordinate Judge, Tiruppur.



WEB COPY

V.M.VELUMANI,J.

kj



C.R.P.(NPD)No.64 of 2018
and C.M.P.No.245 of 2018

27.06.2018

WEB COPY