IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.16010 and 16011 of 2017
and
WMP.Nos.17298 and 17299 of 2017
and
WMP.Nos.18432 and 18433 of 2017

T.S.Ravi Elanchezhian ... Petitioner in W.P.16010/2017

V.Krishnan ... Petitioner in W.P.16011/2017

Vs.

1. Corporation Bank
George Town Branch,
Rep by its Branch
Manager & Principal Officer,
Chennai - 600 001.

2. The Presiding Officer,
Debts Recovery Tribunal II at Chennai,
4th Floor, Dewa Tower, 770A,
Anna Salai, Chennai - 600 002.

3. The Chairperson,
Debts Recovery Appellate,
Tribunal at Chennai,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008. ... Respondents in both W.Ps

Prayer in W.P.No.16010 of 2017 :

Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order dated 14-02-2017 and made in M.A.No.67 of 2011 on the file of the 3rd Respondent herein viz., the Hon'ble Debts Recovery Appellate Tribunal at Chennai thereby confirming the Order dated 02-12-2010 and made in I.A.No.788 of 2009 in New T.A.No.374 of 2001 (Old T.A.No.585 of 1997) on the file of the 2nd Respondent herein viz., the Hon'ble Debts Recovery Tribunal II at Chennai and quash the same and direct the 2nd Respondent viz., Debts Recovery Tribunal II at Chennai to refer the documents of guarantee and hypothecation relating to the Petitioner which have been filed by the 1st Respondent herein in the above (Old T.A.No.585 of 1997) New T.A.No.374 of 2001 on the file of the Hon'ble Tribunal to hand writing experts of Forensic Sciences Department of Tamil Nadu having the office at 30A, Kamarajar Salai, Santhome, Chennai - 600 004 for comparing the same with that of the admitted signatures of the Petitioner herein found in the documents filed in I.A.No.788 of 2009 and submit a report about the genuineness or otherwise of the same.

Prayer in W.P.No.16011 of 2017 :

Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order dated 14-02-2017 and made in M.A.No.65 of 2011 on the file of the 3rd Respondent herein viz., the Hon'ble Debts Recovery Appellate Tribunal at Chennai thereby confirming the Order dated 02-12-2010 and made in I.A.No.787 of 2009 in New T.A.No.374 of 2001 (Old T.A.No.585 of 1997) on the file of the 2nd Respondent herein viz., the Hon'ble Debts Recovery Tribunal II at Chennai and quash the same and direct the 2nd Respondent viz., Debts Recovery Tribunal II at Chennai to refer the documents of guarantee and hypothecation relating to the Petitioner which have been filed by the 1st Respondent herein in the above (Old T.A.No.585 of 1997) New T.A.No.374 of 2001 on the file of the Hon'ble Debts Recovery Tribunal II at Chennai to hand writing experts of Forensic Sciences Department of Tamil Nadu having the office at 30A, Kamarajar Salai, Santhome, Chennai - 600 004 for comparing the same with that of the admitted signatures of the Petitioner herein found in the documents filed in I.A.No.787 of 2009 and submit a report about the genuineness or otherwise of the same.

For Petitioners in both W.Ps : Mr.S.Mahimai Raj
For Respondent-1 in both W.Ps : Mr.N.Sivabalan for Mr.S.Sethuraman

COMMON ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

The petitioners have challenged the common order dated 14.02.2017 made in M.A.65 & 67 of 2011 by the Debts Recovery Appellate Tribunal, Chennai (hereinafter referred as "DRAT"), which has confirmed the order dated 02.12.2010 made in I.A.Nos.787 and 788 of 2009 in New T.A.No.374 of 2001 (Old

T.A.No.585 of 1997) passed by the Debts Recovery Tribunal II, Chennai (hereinafter referred as "DRT") and to quash the same. The petitioner has further sought for direction, directing the second respondent (DRT) to refer the documents of guarantee and hypothecation relating to the petitioners, filed by the first respondent herein in New T.A.No.374 of 2001 (Old T.A.No.585 of 1997) on the file of the DRT to Handwriting Expert of Forensic Science Department of Tamil Nadu for comparing the same with that of the admitted signature of the petitioners found in the documents filed in I.A.Nos.787 and 788 of 2009 and submit a report about the genuineness.

2. The case of the petitioners in both the Writ Petitions is that the first respondent bank originally filed a suit on the file of this Court for recovery of a sum of Rs.65,38,733.22 with interest alleging that one M/s.Karpagam Leather Exports availed loan, to which, the petitioners stood as one of the guarantors. It is the claim of the petitioners that they never stood as guarantors to the above suit loan transaction. The suit was numbered as C.S.No.307 of 1996, in which the first respondent in the Writ Petition has arrayed the said M/s.Karpagam Leather Exports and the petitioners herein, as defendants 3, 6 and 7 respectively. The above suit was subsequently transferred to the file of the DRT II, Chennai and the suit was renumbered as T.A.No.585 of 1997. The said T.A.No.585 of 1997 was lateron renumbered as T.A.No.374 of 2001.

3. The first respondent bank issued a notice dated 23.03.1995 alleging that the petitioners stood as one of the guarantors for the above loan transaction advanced by the first respondent bank to M/s.Karpagam Leather Exports. It is further alleged that the petitioners in W.P.Nos.16010 and 16011 of 2017 sent a reply notice through their counsel on 29.03.1995 and 04.01.1995 respectively, denying the allegations of the first respondent bank. The petitioners have stated that they never stood as guarantors to the loan and never created an equitable mortgage against their property. Further, the petitioners stated that their signatures have been forged in the instruments of hypothecation and guarantee, and they always signed only in English, but the signatures found in the documents were in Tamil. In the above T.A., with the permission of the Tribunal, the petitioners also caused a search of the records filed by the first respondent bank and found that their signatures were forged and the petitioners were also filed their reply statement to that effect and the respondent bank also filed proof affidavit reiterating the allegations. The petitioners have filed applications in I.A.Nos.1160 and 1159 of 2002 seeking permission for Cross Examination of the first respondent bank and that the same are still pending. The petitioners also submitted that the first respondent bank has miserably failed to

scrutinize the fact as to whether the persons, who allegedly appeared before the bank for signing the record, were really the petitioners or not. The petitioners have filed several documents, especially documents of the contemporary period, for comparing the same with the signatures found in the disputed documents. It is stated in the petitioners affidavit that the petitioners took out applications in I.A.Nos. 1794 and 1795 of 1999 for comparison of the forged signatures of the petitioners vis-a-vis that of the admitted signatures of the petitioners. Since at that stage, the trial did not commence, the above applications were not ordered on merits, but dismissed for default. It is alleged by the petitioners that the first respondent bank continued to stress that the signatures found in the records, which are relied on by the bank, are that of the petitioners. Therefore, the petitioners had no other alternative than filing fresh applications, in I.A.Nos.787 and 788 of 2009 before the Tribunal praying to refer those documents, viz., documents of guarantee and hypothecation relating to the petitioners, filed by the first respondent bank, in the above T.A.No.374 of 2001, to the handwriting experts of Forensic Science Department of Tamil Nadu, for comparing the same, with that of the admitted signatures of the petitioners found in the contemporaneous documents filed along with the petitions and submit a report, about the genuineness of the same.

4. In the above I.A.Nos.787 and 788 of 2009, the first respondent bank submitted that the applications cannot be ordered for the reason that, the earlier applications were rejected. The above I.A.No.788 of 2009 was taken up for hearing along with I.A.No.787 of 2009 filed by the seventh defendant, who had also fought for an identical prayer in the above T.A.No.374 of 2001. Vide common order dated 02.12.2010, the Tribunal has dismissed both the above applications in I.A.Nos.787 and 788 of 2009. Hence, the petitioners preferred appeals, in M.A.Nos.65 and 67 of 2011 respectively before DRAT, Chennai, praying to set aside the order dated 02.12.2010 made in I.A.Nos.787 and 788 of 2009 and to allow the appeals. However, DRAT has dismissed M.A.Nos.65 & 67 of 2011 on 14.02.2017 filed by the 6th and 7th defendants, who are the petitioners herein. Aggrieved by the said orders of the DRAT, instant Writ Petitions have been filed.

5. Learned counsel for the first respondent would submit that in the counter affidavits filed in I.A.Nos.787 & 788 of 2009, the first respondent bank submitted that Mr.T.S.Ravi Elanchezhian and Mr.V.Krishnan, petitioners in W.P.Nos.16010 and 16011 of 2017, who were the 6th and 7th defendants in the suit, filed I.A.Nos.1794 & 1795 of 1999 before the Tribunal for the

same relief and on the said applications, the first respondent bank had filed a counter. After filing the counter, the Tribunal was pleased to direct the petitioners herein, to file documents with their signatures, in the office of the Tribunal and the petitioners have failed to file documents, despite several adjournments. Thr Tribunal, however, dismissed the said applications in I.A.Nos.1794 and 1795 of 1999 on 11.09.2001 and the petitioners have not filed any applications to restore the said applications, instead they have taken out the present applications for the same relief, which is hit by the doctrine of res judicata and hence, not maintainable. The said applications are filed only to protract the proceedings.

6. Heard both the counsel and perused the materials available on record.

7. It is clear from the case put forth by the petitioners that they were arrayed as the 6th and 7th defendants in C.S.No.307 of 1996 in the suit, filed by the first respondent herein, seeking for a decree against the defendants, directing them to pay the plaintiff (first respondent herein) jointly or severally, a sum of Rs.65,38,735.22 together, with pentendi lite, and future interest thereon at 22.75% p.a. compounded with quarterly rests, with the costs of the suit including the costs in terms of order 20A of CPC. The suit was transferred to DRT II, Chennai and renumbered as New T.A.No.374 of 2001. The petitioners have filed their reply disputing the allegations against them, that they were the guarantors to the loan availed by one M/s.Karpagam Leather Exports. The petitioners have filed I.A.Nos.1794 and 1795 of 1997, seeking a prayer to refer the documents of guarantor agreement and hypothecation agreement, to the handwriting experts, to compare their signatures with the signatures found in the documents filed. However, in the affidavit filed in support of the instant Writ Petitions, the petitioners have not averred the fate of the above applications I.A.Nos.1794 and 1795 of 1997, except in, paragraph 7 of W.P.No.16010 of 2017 and paragraph 9 of W.P.No.16011 of 2017 to state that "...... In view of the above, I took out an application in I.A.No.1794 of 1999 (in the case of petitioner in W.P.No.16010 of 2017) I.A.No.1795 of 1999 (in the case of petitioner in W.P.No.16011 of 2017) for comparison of the forged signatures of the petitioner ie., myself vis-a-vis that of the admitted signatures of mine. It is submitted that since the trial did not commence at that stage, the above application was not ordered on merits, but dismissed for default." The petitioners have not furnished any other information pertaining to the above applications including the date of dismissal of the applications filed by them. The petitioners have taken out applications in I.A.Nos.787 and 788 of 2009, for the same relief, as sought for, in I.A.Nos.1794 and 1795 of 1999 and that too, after a lapse of 10 years.

8. Upon perusal of the common order passed in I.A.Nos.787 and 788 of 2009 dated 02.12.2010 passed by the DRT II, the second respondent herein, it could be seen that the petitioners have initially filed applications in I.A.Nos.1794 and 1795 of 1999, which were dismissed for default on 11.09.2001, after a period of four years of initiation of the above applications. In fact, it is also seen from the order that the petitioners did not file any documents containing their admitted signatures to be forwarded to handwriting expert for opinion. Even after four years from the date of filing, they did not produce any document containing their admitted signatures. As the Tribunal had no other option, dismissed the application. After a period of almost 9 years, the present applications in I.A.Nos.787 and 788 of 2009 have been filed only in the year 2009. Perusal of the entire records shows that nowhere in the affidavit, the petitioners have stated about the details of the earlier applications. The petitioners have deliberately and wantonly suppressed the filing of similar applications in the year 1999, seeking for the same relief, only with a view to get a favorable order. The DRAT has observed that the bank lent loan in the year 1994 and is still waiting for adjudication, even though 23 years have passed, from the date of borrowing. In the year 1999, the petitioners made applications for comparison of their signature, but did not persuade. Once the petitioners have not chosen to pursue the relief for years together, their prayer cannot be considered. The attitude of the petitioners in suppressing the details of the earlier proceedings initiated by them, is highly deprecated. The second respondent DRT-II has rightly rejected the applications filed by the petitioners not only on the ground of suppression, but also on the ground that documents filed along with I.A.Nos.787 and 788 of 2009 cannot be treated as documents containing the admitted signatures of the petitioners during the relevant period. The petitioners ought to have produced the same at the time when they filed the petitions I.A.Nos.1794 and 1795 of 1999, seeking a prayer to forward the same with the disputed signatures, to the handwriting experts for comparison and opinion. The petitioners have failed to do so, at the relevant point of time.

9. Learned counsel for the petitioners would submit that burden is cast upon the respondents to prove their documents, for which, the Tribunal should seek the assistance of an handwriting expert. In support of his contention, learned counsel for the petitioners relied on the decision of the Hon'ble Supreme Court reported in (2008) 4 Supreme Court Cases 530 (Thiruvengadam Pillai ..Vs.. Navaneethammal and Another). wherein, it is held as follows:-

> "In The State (Delhi Administration) v. Pali Ram [1979 (2) SCC 158] this Court held

that a court does not exceed its power under section 73 if it compares the disputed writing with the admitted writing of the party so as to reach its own conclusion. But this Court cautioned :

"Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

The caution was reiterated in O. Bharathan vs. K. Sudhakaran 1996 (2) SCC 704. Again in Ajit Savant Majagvai v. State of Karnataka [1997 (7) SCC 110] referring to section 73 of the Evidence Act, this Court held : "The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the dispute signature with the admitted signature as this power is clearly available under Section 73 of the Act."

10. In the decision cited supra, document was produced before the Court for comparison. But in the present case on hand, documents have not been produced before the Tribunal at

the earlier stage. After protracting the case successfully for 20 years, the petitioners sought for a prayer to send the documents to the handwriting expert. The petitioners have approached both the Tribunal, as well as the Appellate Forum and this Court, with unclean hands, suppressing the vital facts of the earlier proceedings, initiated by them, for the very same prayer. They cannot be permitted to agitate the same after 20 years. DRAT has confirmed the orders passed by the second respondent DRT II. We do not find any infirmity in the orders passed by the second and third respondents herein, rejecting the applications, and appeals filed by the petitioners respectively. For the reasons stated supra, this Court is not inclined to interfere with the orders passed by the Tribunals.

11. In the result, the Writ Petitions are dismissed. At this juncture, We direct the second respondent (DRT II) to take up the case, New T.A.No.374 of 2001 (Old T.A.No.585 of 1997), which is pending adjudication for the past two decades, for trial, on a day-to-day basis and dispose of the same, within a period of three months from the date of receipt of a copy of this order. No Costs. Consequently, connected impleading petitions and stay petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

raja/mra

To

1. Corporation Bank
George Town Branch,
Rep by its Branch
Manager & Principal Officer,
Chennai - 600 001.

2. The Presiding Officer,
Debts Recovery Tribunal II at Chennai,
4th Floor, Dewa Tower, 770A,
Anna Salai, Chennai - 600 002.

3. The Chairperson,
Debts Recovery Appellate,
Tribunal at Chennai,

4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008.

+2cc to Mr.S.Mahimai Raj, Advocate SR.No.5327, 5328
+2cc to Mr.S.Sethuraman, Advocate SR.No.5634, 5635
+1cc to Mr.King and Patridge, Advocate SR.No.5398

MR(CO)
GN(15/02/2018)