



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD) Nos.421 and 422 of 2014
and
M.P. (MD) No.1 of 2014

G.Ragavalu
2.Sulochana

: Revision Petitioners in both cases

vs.

N.Saroja : Respondent in both cases

PRAYER in C.R.P. (NPD) (MD) No.421 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the learned Principal Subordinate Judge, Tiruchirapalli, dated 05.07.2011, in I.A.No.23 of 2011, in O.S.No.514 of 2003.

PRAYER in C.R.P. (NPD) (MD) No.422 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the learned Principal Subordinate Judge, Tiruchirapalli, dated 21.09.2012, in I.A.No.55 of 2012, in O.S.No.514 of 2003.

For Petitioners : Mr.S.K.Mani

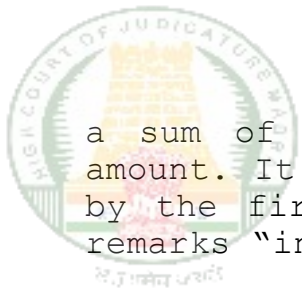
For Respondent : Mr.R.Sundar Srinivasan

COMMON ORDER

The defendants 1 and 2 in the suit in O.S.No.514 of 2003, on the file of the Principal Sub Court, Trichy, are the revision petitioners in both the revision petitions.

2.The respondent in these revision petitions filed the suit in O.S.No.514 of 2003, before the Principal Sub Court, Trichy, for the recovery of a sum of Rs.2,16,000/- with interest and cost.

3.It is the case of the plaintiff that the revision petitioners jointly borrowed a sum of Rs.1,50,000/- on 05.08.2001, from the plaintiff and jointly executed a pronote in favour of the plaintiff agreeing to repay the same on demand with interest @ 24%. It is the further case of the plaintiff that while she demanded repayment, the first defendant, namely, the first petitioner in these revision petitions had issued a cheque, dated 01.07.2002, for



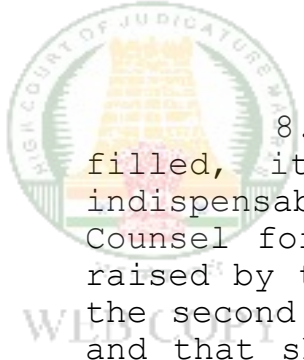
a sum of Rs.1,80,000/- towards part satisfaction of the pronote amount. It is also the case of the plaintiff that the cheque issued by the first defendant was not honoured, as it was returned with remarks "insufficient funds".

4. In the original written statement filed by the revision petitioners, the signature of the first defendant in the pro-note and in the cheque were admitted. However, it was stated that the defendants gave only a blank pro-note and a blank cheque. In the written statement, the defendants have denied the receipt of the money as alleged in the plaint. In the written statement, it is further contended by the revision petitioners that the second defendant was the Managing Director of the third defendant and that they approached the plaintiff's husband, by name, R.Nallu, for a sum of Rs.1,00,000/- for the company. It is only in that context, it was stated in the written statement that the revision petitioners were compelled to execute two blank pro-notes and two blank cheques and that one of the blank cheques and one of the pro-notes had been utilised to file the present suit.

5. The revision petitioners, after examination of PW-1 and PW-2, filed a petition in I.A.No.23 of 2011 in O.S.No.514 of 2003, for appointing an Advocate Commissioner to take the cheque, that was relied upon by the plaintiff, to a Handwriting Expert in Madurai, and to get the handwriting of the first defendant in the cheque verified with the admitted handwriting of the first defendant. The revision petitioners also filed an application in I.A.No.55 of 2012 in O.S.No.514 of 2003, to file additional written statement.

6. The lower Court dismissed I.A.No.23 of 2011 and I.A.No.55 of 2012 in O.S.No.513 of 2003. Aggrieved by the order passed by the lower Court dismissing the applications in I.A.Nos.23 of 2011 & 55 of 2012, in O.S.No.513 of 2003, the revision petitioners have preferred C.R.P.(MD)Nos.421 & 422 of 2014.

7. As regard the petition to get expert opinion, regarding the handwriting in the cheque issued by the first defendant, the learned Counsel for the revision petitioners submitted that in the plaint, the plaintiff has stated that the first defendant issued a cheque dated 01.07.2002, for a sum of Rs.1,80,000/- and that the defendants have specifically denied the execution of the cheque, in the sense that the first defendant had given only a blank cheque, without filling up the contents. As there is a dispute with regard to the contents of the documents and it must have been filled up by the first defendant or by the plaintiff, it is submitted that an expert opinion is necessary to find the truth. Though it is admitted in the written statement that the cheque was signed by the first defendant, the learned Counsel for the revision petitioners submitted that it is not an admission of execution, as the first defendant has specifically raised a defence by stating that a blank cheque alone was issued.



8. Since the cheque produced by the plaintiff is duly filled, it is argued that the expert opinion is relevant and indispensable to prove the case of the defendants. The learned Counsel for the revision petitioners relied upon the plea that was raised by them in the written statement, wherein, it is stated that the second defendant was the Managing Partner of a Partnership Firm and that she borrowed a sum of Rs.1,00,000/- from one R.Nallu, who is non other than the husband of the plaintiff. It is further stated in the written statement that while contracting the said debt for the company, the third defendant, the said Nallu, insisted the first defendant and his wife, the second defendant, to sign in two blank pro-notes and two blank cheques. It is therefore contended that for a sum of Rs.1,00,000/- borrowed by a Company, which is a different entity, the two cheques and the two pro-notes were given without filling it up. The learned Counsel for the revision petitioners further submitted that the cheque filed in this suit is required to be sent for getting expert opinion, so as to prove the case of the defendants. The learned Counsel for the revision petitioners relied upon a judgment of the Honourable Supreme Court in the case of *Kapil Corepacks Private Limited and others vs. Harbans Lal*, reported in (2010) 8 SCC 452, wherein, the Honourable Supreme Court, has held as follows:

".....24.If a false signature is very different from the real signature, and is easily identifiable, it will be a 'forgery' but not a 'clever forgery'. Therefore, if the document allegedly containing the forged signature is covered in such a manner as to show only a stamp/seal and signature, and if a question is put by the court under Order 10 Rule 2 to identify the seal/stamp and the signature and if the witness identifies the signature as his and the stamp/seal as that of his company, there are two possibilities : The first is that what is shown is the genuine signature of the party and the genuine stamp of his company, and that he has identified and admitted them. The second is that they are clever forgeries and the party could not obviously identify the forgery when it was shown to him by covering other portions of the document, when he is given only a normal glance without an opportunity to scrutinize it properly. Whether it is a forgery or not will have to be determined with reference to the expert evidence and after the evidence of both plaintiff and defendants tested by cross-examination.

25. Both the learned Single Judge and the Division Bench committed an obvious error in equating admission of a signature which is claimed to be a clever forgery, as an admission of execution of the agreement/receipt and the contents thereof. The observations of the learned Single Judge in his order that "The Managing Director has signed his signature on the agreement/receipt as well as stamp of the defendant no.1 company on the said document" and the further observation that on the basis of the said



answer, the second appellant could be proceeded under Section 195 of Indian Penal Code read with Section 340 of Code of Criminal Procedure, are without any basis. Equally unwarranted is the observation of the Division Bench : "The Managing Director of the appellant had denied his signature earlier on the agreement/receipt, but when his statement was recorded under Order 10 CPC before the court, an admission came out that the signature were his.... The truth emerged though belatedly".

26. Admission must obviously be a conscious and deliberate act. Admission can be explained. An admission of a signature is not an admission of execution of a document. The power to identify the matters in controversy by examination of parties at the pre-trial stage under Order 10 Rule 2, is completely different from the power exercised by the court under Section 165 of the Evidence Act to put any question it pleases in any form, to a witness or a party in order to discover or to obtain proper proof of relevant facts, or the power under Order 18 Rule 14 of the Code to recall and examine any witness. The court's anxiety to do justice by speeding up the process of the suit should not itself lead to injustice....."

9. From a reading of the said judgment, the Honourable Supreme Court, had occasion to consider the difference between easily identifiable forgery and clever forgery. It is pointed out that admission of a signature, which is claimed to be a clever forgery, cannot be equated as an admission of execution of the document and the contents thereof. Since the admission can be explained, it was held that the admission of the signature is not the admission of the execution of a document. The Honourable Supreme Court dealt with the situation, where a cleverly forged document contains a signature, which is apparently a true signature of the party. When clever forgeries are done, the Honourable Supreme Court observed that the parties cannot obviously identify the signature, when it was shown to them without disclosing the entire document. In that context, it was observed by Hon'ble Supreme Court that the admission of signature is not an admission of execution of the document. This judgment has no application to advance the case of revision petitioners.

10. The learned Counsel for the revision petitioners also relied upon another judgment of this Court in the case of *Thangarasu vs. Arumugam*, reported in (2012) 3 MLJ 658, wherein, this Court has held as follows:

".....34. A debtor may plead and prove actual discharge in a manner or on terms different from those contemplated by or in the documents evidencing the debt. Admission of having signed on a blank paper is no admission of execution of a document. When execution of the Pronote itself is denied and



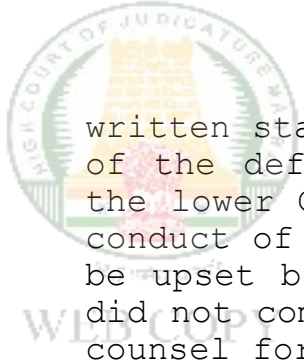
the only fact which is proved is that the thumb impression has been obtained on a blank sheet of paper, then the presumption will not arise as per the decision reported in 1968 All. L.J. 480 (Thakar Lal vs. Ram Adhare).

35. One of the conditions for the presumption to operate as per Section 118 of the Negotiable Instruments Act is that the due and proper execution of the instrument has been proved or admitted. After all, the word 'execution' implies 'conscious execution and knowledge of its contents'....."

11.This Court has no quarrel with the proposition that was held by this Court. However, in the present context, it does not take the revision petitioners anywhere in the present revision petitions.

12.The admission of one's signature may not lead to an inference in every case that there is an admission of execution of document. When the plaintiff says that the cheque was issued by the plaintiff, the plea of the plaintiff cannot be taken as a pleading that the cheque was filled up by the first defendant. Even if the expert opinion is to the effect that the cheque is not filled up by the first defendant, but signed by him, that will not lead to an inference that the cheque was not issued by the first defendant. By proving that the contents of the cheque are not filled by the first defendant, the Court cannot come to the conclusion that the cheque was not issued by the first defendant. The first defendant cannot seek expert opinion to prove that blank cheque alone was issued to the plaintiff. This fact cannot be proved by getting an expert opinion, but by other evidence. The lower Court has rightly held that even if a cheque is filled by some other persons, the cheque is still considered to be a signed negotiable instrument and that it is not necessary to send the cheque / pro-note to handwriting expert for verifying whether the contents of the cheque was really filled up by the first defendant or not. This Court do not find any infirmity or illegality in the order passed by the lower Court. Hence, the revision petition in C.R.P.(MD)No.421 of 2014 has no merits and accordingly, the same is dismissed and the order passed by the learned Principal Subordinate Judge, Tiruchirapalli, dated 05.07.2011, in I.A.No.23 of 2011 in O.S.No.514 of 2003, is confirmed. No costs.

13.As regard, C.R.P.(MD)No.422 of 2014, as pointed out earlier the defendants 1 and 2 have taken a specific stand that two blank cheques and pro-notes were handed over to the plaintiff's husband, by name, R.Nallu, while contracting a debt on behalf of the third defendant, wherein, the second defendant was then the Managing Director. Since the plea taken in the additional written statement is in consonance with the stand taken in the original written statement and plea in the additional written statement is only about a specific transaction in relation to the affairs of the company, that may throw some light in the case of the defendants in the suit, this Court is of the view that the contents in the additional



written statement, will have some relevance in establishing the case of the defendants 1 and 2. However, the petition was dismissed by the lower Court only on the ground of delay and by referring to the conduct of the counsel for the petitioners. The lower Court seems to be upset by the fact that the Counsel for the revision petitioners did not come forward to argue the case, despite the argument of the counsel for the plaintiff / respondent was over. It may be true that the revision petitioners have caused the delay, but, it cannot be a sole ground to reject the petition for filing the additional written statement, in a case, where, the evidence of plaintiff is not yet closed.

14.No prejudice is likely to be caused to the other side on account of the additional written statement to be filed by the defendants, as the revision petitioners have already pleaded a case in defence, which is in line with the stand taken in the written statement. No amount of evidence will be looked into in the absence of a specific plea. Since a plea relating to a collateral transaction has some relevance, this Court is inclined to give one more opportunity to the revision petitioners to file additional written statement. As a result, C.R.P.(MD)No.422 of 2014 is allowed and the order of the learned Principal Subordinate Judge, Tiruchirapalli, dated 21.09.2012, in I.A.No.55 of 2012 in O.S.No.514 of 2003, is set aside and the application in I.A.No.55 of 2012 in O.S.No.514 of 2003, on the file of the Principal Subordinate Court, Tiruchirapalli stands allowed. No costs.

15.Having regard to the fact that the suit is of the year 2003 and it is pending for more than 15 years, the learned Principal Subordinate Judge, Tiruchirapalli, is directed to dispose of the suit in O.S.No.514 of 2003, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar.

To

The Principal Subordinate Judge, Tiruchirapalli.

Copy to:

The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai (2 Copies)
+1CC to Mr.R.Sundar Srinivasan, Advocate, SR.No. 62372
+2CC to Mr.S.K.Mani, Advocate, SR.Nos.62849, 62850

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