



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.1113 of 2018

and

C.M.P.MD) No.4764 of 2018

T.R.Krishnamoorthy

... Petitioner/Petitioner/Appellant

/Vs/

K.Kuppusamy

... Respondent/Respondent/Respondent

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 08.01.2018 in I.A.No.228 of 2016 in A.S.No.9 of 2016 on the file of the Principal District Judge, Tiruchirappalli and allow this civil revision petition with costs.

For Petitioner

: Mr.H.Lakshmi Shankar

for M/s.T.V.Sivakumar

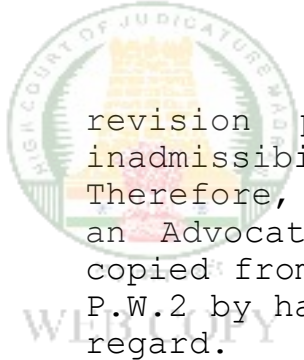
For Respondent

: Mr.S.Vinod Sathya Lazar

ORDER

O.S.No.663 of 2009 on the file of the second Additional Sub Court, Trichy was filed by the respondent herein for directing the revision petitioner herein to pay a certain sum of money. The suit was decreed on 29.02.2016. Questioning the same, the revision petitioner filed A.S.No.9 of 2016 before the Principal District Judge, Trichy. In the first appeal, the revision petitioner filed I.A.No.228 of 2016.

2. The case set out by the revision petitioner in the said I.A.No.228 of 2016 is that P.W.2, who deposed in favour of the plaintiff had confided in him that he had come to depose only under the compulsion of the plaintiff. This conversation had been recorded by the revision petitioner in his mobile phone. The contents recorded in the revision petitioner's cellphone was duly copied in a CD and the said CD was marked in evidence as Ex.B2. But, the trial Court had characterized the said Ex.B2 as inadmissible in evidence. This was for two reasons. One reason was that the contents of the CD could not be compared with the voice sample of P.W.2. Another reason was that the certificate in terms of Section 65 B of the Indian Evidence Act was not produced. The



revision petitioner, wanting to overcome this impediment of inadmissibility, wanted the voice sample of P.W.2 to be taken. Therefore, he filed the said I.A.No.228 of 2016 for appointment of an Advocate Commissioner to take the CD in question, which was copied from the memory card to be compared with the voice sample of P.W.2 by having him examined by expert and for filing report in this regard. The first appellate Court, by order dated 08.01.2018 dismissed the I.A.No.228 of 2016. Aggrieved by the same, this civil revision petition has been filed.

3. Heard the learned counsel on either side.

4. The learned counsel appearing for the revision petitioner reiterated the contentions set out in the memorandum of grounds.

5. He placed particular reliance on the decision of the Supreme Court in the case of **Sonu (a) Amar Versus State of Haryana** reported in **AIR 2017 SC 3441**. He also contended that the case of the plaintiff hinges considerably on the deposition of P.W.2 and that it is very important for the revision petitioner to impeach the credibility of the said witness to undermine his testimony through Ex.B2. Since the Court below had declined to hold the said exhibit as admissible, it was necessary that the IA in question is allowed.

6. I am unable to agree with the said submission of the learned counsel appearing for the revision petitioner.

7. The revision petitioner ought to have taken these steps before the trial Court itself. Having slept over the matter when the case was pending before the trial Court, he cannot now seek to reopen the entire proceedings by filing an application before the appellate Court. This Court sustains the order passed by the lower appellate Court not for the reasons set out in the impugned order but on grounds of laches. However, the revision petitioner is given liberty to assail the stand of the trial Court that Ex.B1 is inadmissible in evidence for non filing of the certificate in terms of Section 65 B of the Indian Evidence Act at the time of arguments in the main appeal.

8. With these observations and liberty, the order impugned in this civil revision petition is sustained. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (Records)

/True Copy/



The Principal District Judge,
Tiruchirappalli.

+ 1 CC TO Mr.H.LAKSHMI SHANKAR, ADVOCATE IN SR No. 89084

SM

TE/PM/SAR-3 : 19/11/2018 : 3P/3C

Order made in
C.R.P. (MD) (PD) No.1113 of 2018
05.10.2018