



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.2104 of 2016 (PD)
and
CMP(MD)No.9847 of 2016

Thirumoorthy

... Petitioner

Vs.

P.Gunasekaran

... Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records the fair and decreetal order dated 05.01.2016 made in I.A. No.474 of 2013 in O.S No.246 of 2011 on the file of the Additional Sub Court, Karur and to set aside the same.

For Petitioner : Mr.V.Sitharanjandas

For Respondent : Mr.V.Balaji

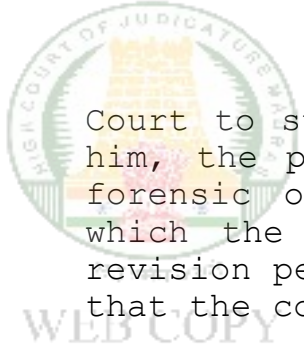
O R D E R

The revision petitioner is the plaintiff in OS No.246 of 2011 on the file of the Sub Court, Karur. It is a suit for directing the defendant to pay him a certain sum of money. The suit was filed on the strength of a promissory note. The defendant in his written statement denied the execution of the pro-note and also the signature attributed to him in the suit pro-note. Therefore, the plaintiff filed IA No.474 of 2013 for appointment of an Advocate Commissioner for comparison of the signature of the defendant found in the promissory note with that of the admitted signature of the defendant for getting expert opinion. The plaintiff also filed a memo for directing the defendant to produce any admitted document in which his signature was admittedly made. The defendant filed his counter as well as reply questioning the very maintainability of the said I.A. He nowhere averred in the counter or in his objection denying that he was in possession of a contemporaneous document in which his signature has been made. But, the court below dismissed the I.A by order dated 05.01.2016. The correctness of the said order is questioned in this Civil Revision Petition.

2.Heard the learned counsel on either side.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel appearing for the respondent wanted this



Court to sustain the order passed by the court below. According to him, the person who seeks submission of the disputed document for forensic opinion shall also file the contemporaneous document in which the signature of the other party is admitted. Since the revision petitioner did not produce such a document, he would submit that the court below rightly dismissed the said I.A.

4.The learned counsel for the respondent relied upon the order of this Court dated 07.03.2013 made in CRP (PD) (MD)No.3388 of 2011 in which it has been observed that it was for the applicant to place the document before the court below and if the other side admits that the signature found in the document is that of the disputed person, then he would be entitled to send the document along with the disputed document for comparison of the signature.

5.I am of the considered view that this was not the ratio laid down. A direction in a particular case will not constitute the ratio of that case. Other than this, the learned counsel for the respondent has not produced any other case law. Section 73 of the Indian Evidence Act states that when ascertain whether a signature is that of the person by whom it purports to have been written, any signature writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved.

6.In this case, the revision petitioner had filed a memo calling upon the respondent to make available an admitted document in which his signature is present. If the respondent had filed an affidavit denying the possession of such a document which is contemporaneous in nature, then the Trial Court would have been justified in dismissing the said interlocutory application. In this case, the respondent has not taken such a stand. Therefore, the order impugned in this civil revision petition is set aside. The matter is remitted to the file of the court below. The respondent will file an affidavit either admitting or denying the possession of the said contemporaneous document in which his signature is there. If he denies the availability of the such a document, the matter has to necessarily rest there. Based on the stand to be taken by the respondent herein, the court below shall pass final orders in the matter.

7.With this observation, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/



To

The Additional Subordinate Judge,
Additional Sub Court, Karur.

WEB COPY

+1CC TO MR.V.BALAJI, ADVOCATE IN SR.NO.79945.

+1CC TO MR.V.SITHARANJANDAS ADVOCATE IN SR.NO.79540.

SKM

DS RP SAR-4 01.10.2018 3P/4C

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