

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2019

PRONOUNCED ON : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.2928 of 2015
and M.P.NO.1 of 2015

Purushothaman

... Petitioner

vs.

Ramalingam

... Respondents

PRAYER in all CRPs.: Civil Revision petitions filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 20.03.2015 made in I.A.No.381 of 2012 in O.S.No.64 of 2010 on the file of Additional District and Sessions Court, Chengalpattu

For Petitioner : Mr.V.Lakshminarayanan

For Respondent : M/s.Gayatri for
Mr.P.B.Balaji

ORDER

The present Civil Revision Petition is directed against the fair and decretal order dated 20.3.2015 passed by the Additional District Court, Chengalpattu in I.A.No. 381 of 2012 in A.S.No 64 of 2010.

2. By the impugned order, the trial court has dismissed the application filed by the petitioner herein under section 45 of the Indian Evidence Act, 1872 for comparing the admitted signature of the petitioner in the front page of Ex.A.1 and acknowledgment card in Ex.A.4 with that of the disputed signature at the back of Ex..1 and Ex.A.2 by way of calling a Government Handwriting Expert from the Forensic Science Department, Chennai to compare the same in the court premises.

3. The respondent herein had filed O.S.No.199 of 2007 before the Principle Subordinate Judge, Chengalpattu to recover a sum of Rs.2,94,800/- from the petitioner on the strength of two promissory notes which were marked as Ex.A .1 and Ex.A. 2 dated 2.5.2000 and 2.9.2004 in the above suit. The petitioner suffered an adverse judgment and decree dated 5.7.2007 .

4. In the suit, the petitioner had raised several defences including that of limitation. The petitioner also disputed the signature in these two exhibits.

5. Before the trial court, the petitioner had earlier filed I.A No 809 of 2007 after the commencement of trial to examine these two exhibits by an expert.

6. In Ex.A.1 there was an endorsement with the signature of the petitioner at the backside dated which is 12.4.2005 which was disputed by the petitioner. Similarly, the petitioner also disputed the signature in Ex.A. 2.

7. The said application was dismissed by the court by placing reliance on the judgment of this court rendered in **M Govindraj versus N. Nallasivam 2008 (2) CTC 580**.

8. There the Court after referring to Section 73 of the Indian Evidence Act, 1872 held that the said provision gave ample power to the Trial Court to compare the signature in the disputed document and the admitted signatures of the revision petitioner and then come to an independent conclusion based on such comparison.

9. In the said case, this Court also held that if the Trial finds it difficult to arrive at any definite conclusion even after such comparison, it is open to either of the parties to take the document to a handwriting expert for comparison for an expert opinion. The Trial Court in the present case did not deem it fit to send the Exs.A1 and A2 for examination by an expert.

10. Before the Appellate court a similar request was thereafter made by the petitioner in I.A.No.381 of 2012 which has culminated in the impugned order. The Appellate court while disposing the above application, has observed that without preferring any appeal against the order passed in I.A.No.809 of 2007, the petitioner has filed a similar application before it and therefore the said prayer having been rejected on an earlier occasion by the Trial court, I.A.No.381 of 2012 was barred by *res-judicata*. Challenging the same, the petitioner has preferred the present Civil Revision Petition.

11. Learned counsel for the petitioner submitted that the impugned order passed by the Appellate court while rejecting I.A.No. 381 of 2012 has resulted in a miscarriage of justice. It was further submitted that the reasoning given by the Appellate court was incorrect as *res-judicata* will not apply.

12. Per contra, learned counsel for the respondent submitted that the petitioner having failed to challenge the order passed by the trial court rejecting I.A.No.809 of 2007 under similar circumstances, precluded the petitioner from filing a similar application at the appellate stage.

13. Further, it was submitted that the trial court had also examined the signature independently under section 73 of the Indian Evidence Act, 1872

while coming to a definite conclusion that the signature in the contentious Exhibits were that of the petitioner and therefore the impugned order need not be interfered at this stage.

14. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

15. In this case, the petitioner has disputed subsistence of debt in Exhibit A1 and 2. According to the petitioner, the debt in Exhibit A1 had been earlier discharged and his signature at the backside of the said exhibit was forged. Similarly, according to the petitioner Exhibit A2 was also forged. Thus, the petitioner has disputed to debt. Therefore, the Trial Court should have sent these document for examination by an expert.

16. In this case, the trial court had taken upon itself the task of comparing the signature purportedly under section 73 of the Indian Evidence Act, 1872 and it has noted that the admitted signature in the front side of Ex.A.1 dated 2.5.2000 and Ex. A .4 and the disputed signature at the backside of Ex. A.1 dated 2.5.2000 on 12.4.2005 varied only to the extent of the Tamil letter “ r “ and Sanskrit letter “#” .

17. It has observed that the petitioner used to write in running letters in a speed manner and the letter “ j” found in signature dated 2.5.2000. In Ex. A.1 below the stamp paper was similar with the letter found in the disputed signature. Therefore on comparison of the disputed signatures in Exhibits A 1 and 2 with admitted signatures in Exs.A. 1 and A.4 it has concluded that they were similar to that of the signature dated 12.4/1.2005 in Ex.A1. The trial court has concluded that the signatures in Exs.A 1 and A. 2 are that of the same person i.e the petitioner.

18. The above finding of the Trial court decided the case against the petitioner resulting in the suit being decreed against the petitioner. If the trial court had allowed the expert to give an opinion and thereafter the court had agreed with the same, things would have been different.

19. Section 45 of the Indian Evidence Act, 1872 allows a party to persuade the court to appoint an expert to give an opinion regarding handwriting, fingerprints etc.

20. Under section 73 of the same Act, the court can also make a comparison by asking the person present in the court to write any words or figures for the purpose of enabling it to compare the words of figure so written with any other words of figure alleged to have been written by such person.

21. The Hon'ble Supreme Court in **The State (Delhi Administration) versus Pali Ram** 1979 (2) SCC 158 has held that although there is no legal bar for a judge to use his own eyes to compare the disputed writing with the admitted writing, even without the help of the evidence of any handwriting expert, the judge should, as a matter of prudence and caution, hesitate to base his findings 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 for a judge to take upon himself the task of comparing the admitted writing with the disputed 1 to find out whether the 2 agree with each other; and prudent course is to obtain the opinion and an assistant of an expert.

22. In **Ajit Savant Majagvai v. State of Karnataka**, (1997) 7 SCC 110 the Court held that “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 disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act.”

23. *Thiruvengadam Pillai v. Navaneethammal*, (2008) 4 SCC 530 the Court held that “ While there is no doubt that court can compare the disputed handwriting/ signature/ finger impression with the admitted handwriting/signature/finger impression, such comparison by court without the assistance of any expert, has always been considered to be hazardous and risky. Where the court finds that the disputed finger impression and admitted thumb impression are clear and where the court is in a position to identify the characteristics of fingerprints, the court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the court should not hazard a guess by a casual perusal.”

24. In my view, the Trial court should have allowed the application. However, it was not allowed. At the same time, the petitioner also did not choose to have the decision of the trial court reversed as soon as orders were passed in I.A.No.809 of 2007.

25. The petitioner should have at least filed the above application at an earlier stage after institution of the appeal if not earlier after I.A.No.809 of 2000 was dismissed by the Trial court. The petitioner however allowed the suit to be decreed. The appeal against judgement and decree was numbered 2 years after the suit was decreed. I.A.No.381 of 2012 in A.S.No.64 of 2010 was

filed 4 years after the suit was decreed indicating that the petitioner was not serious in pursuing the above remedy before the Trial Court and before the Appellate Court.

26. The reasoning given by the appellate court while dismissing I.A.No.381 of 2012 is not correct. At the same time, I am not in the position to interfere with the impugned order as I.A.No.381 of 2012 in A.S.No.64 of 2010 was filed only in the year 2012 before the Advocate Commissioner.

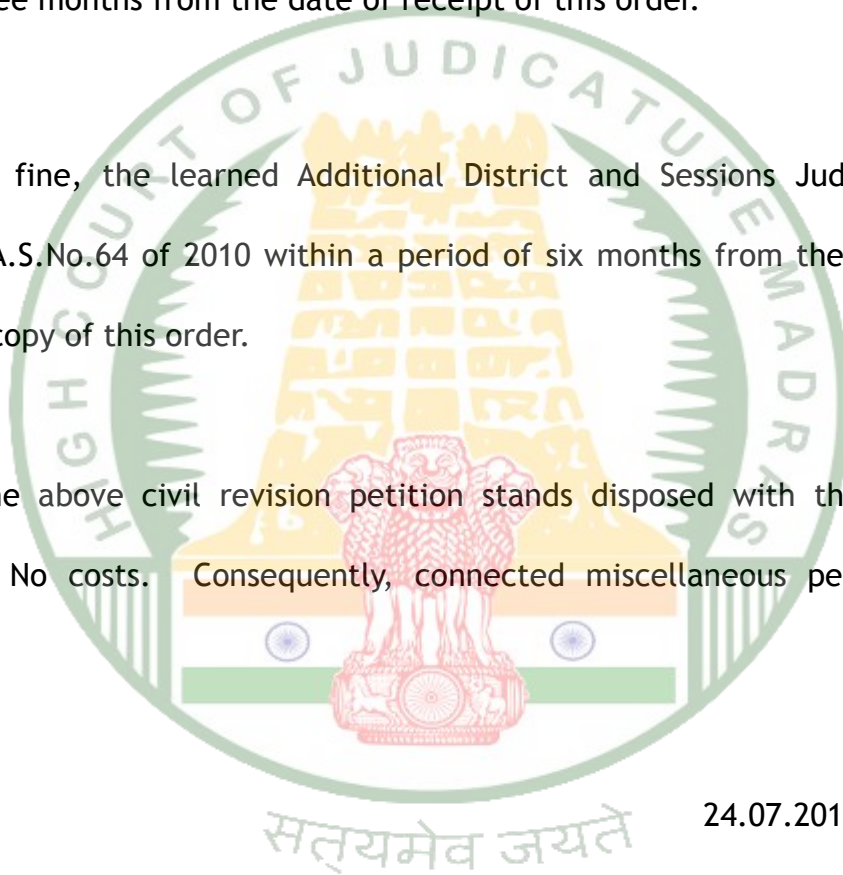
27. The petitioner is however entitled to make appropriate submission before the appellate court to dislodge the finding of the trial court regarding the authenticity of the signatures and the finding given by the trial Court regarding the respective exhibits by exhorting the court to exercise its power under Section 73 of the Indian Evidence Act, 1872.

28. In case, the appellate court comes to a conclusion that the subject Exs.A1 and A2 does raise a shadow of doubt in its mind that the signatures in the subject Exhibits were not that of the petitioner but were forged, it may suo motto grant relief to the petitioner in terms of the prayer in I.A.No.381 of 2012 without further application by the petitioner before passing final orders.

29. Needless to state, if such a decision is arrived by the appellate court to refer the exhibits for examining under Section 45 of the Indian Evidence Act, 1872 the remuneration and the charges for such exercise shall be borne out by the appellant. The appellate court shall complete the above exercise within a period of three months from the date of receipt of this order.

30. In fine, the learned Additional District and Sessions Judge shall dispose the A.S.No.64 of 2010 within a period of six months from the date of receipt of a copy of this order.

31. The above civil revision petition stands disposed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.



24.07.2019

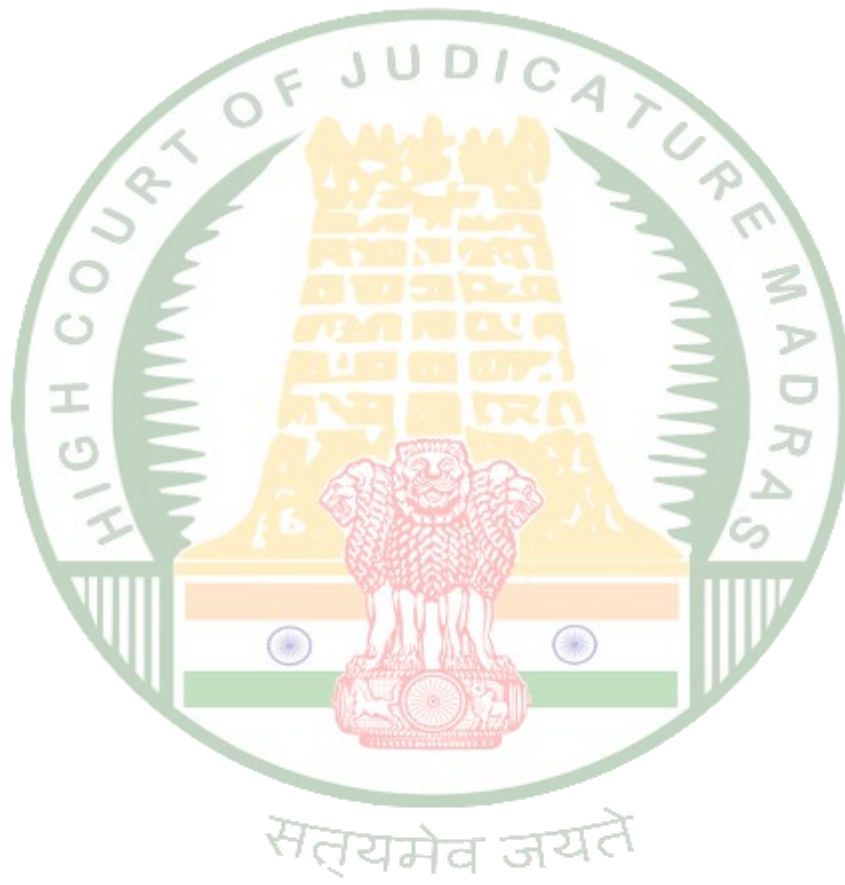
Index :Yes/No

Internet :Yes/No

Speaking : Non Speaking order

kkd

WEB COPY



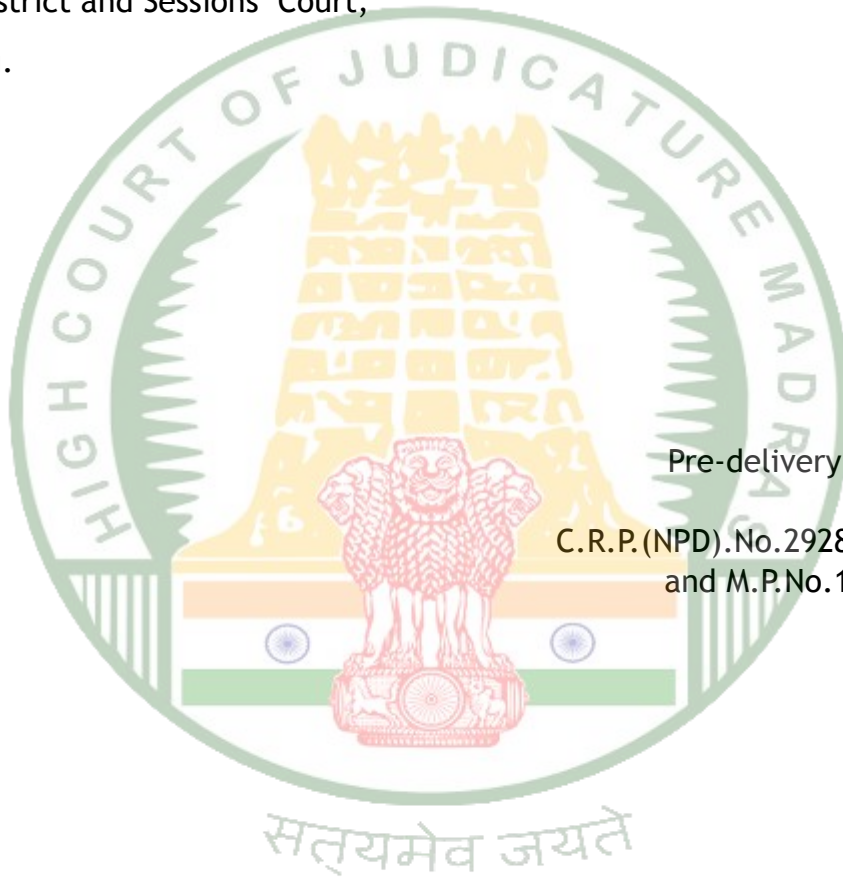
WEB COPY

C.SARAVANAN,J.

kkd

To

Additional District and Sessions Court,
Chengalpattu.



Pre-delivery order in

C.R.P.(NPD).No.2928 of 2015
and M.P.No.1 of 2015

-

WEB COPY

24.07.2019