

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.266 of 2013 and
M.P.No.1 of 2013

Tmt. Chtira ... Petitioner

v.

Tmt. Sandhiya ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India,
against the fair and decreetal order dated 06.11.2012 passed in
C.M.P.No.839 of 2012 in A.S.No.58 of 2011 on the file of the II Additional
City Civil Judge, Chennai.

For Petitioner : Mr. A.R. Nixon

For Respondents : Mr. M. Devendran

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ORDER

Challenging the fair and final order passed in .C.M.P.No.839 of 2012 in A.S.No.58 of 2011 on the file of the II Additional Judge, City Civil Court, Chennai, the plaintiff in O.S.No.1980 of 2007 on the file of the I Assistant Judge, City Civil Court, Chennai, has filed the above Civil Revision Petition.

2. The petitioner filed the suit in O.S.No.1980 of 2007 for recovery of a sum of Rs.4,13,000/- together with interest, which was alleged to have been borrowed by the respondent-defendant on two pronotes. The defendant filed her written statement and contested the suit.

3. The Trial Court, after taking into consideration the oral and documentary evidences, dismissed the suit finding that the defendant had not signed the pronotes.

4. When the defendant has not taken a specific plea in the written statement with regard to the signature found in the suit pronotes,

the plaintiff chose not to file the application for comparison of the signature before the Trial court.

5. The judgment and decree passed by the Trial Court was challenged by the plaintiff in A.S.No.58 of 2011 before II Additional Judge, City Civil Judge, Chennai.

6. In the First Appeal, the petitioner-plaintiff filed an application in C.M.P.No.839 of 2012 for sending the documents marked as Exs.A1 to A8 along with the admitted signature in the deposition along with the hand written paper by the respondent in the course of cross examination to the Expert. The respondent filed her counter and opposed the application.

7. The Lower Appellate Court, dismissed the application finding that the plaintiff should have filed the application before the Trial Court and the application has been filed at a belated stage.

8. As already stated, when the defendant has not specifically taken a plea that her signature was forged, the plaintiff would have

thought not to file an application for comparison of the signature. However, the Trial Court, compared the signature on its own and gave a finding that the defendant has not signed the documents. In these circumstances, the plaintiff filed an application for comparison of the signature before the Lower Appellate Court.

9. In the interest of justice, the Lower Appellate court should have allowed the application for the reason that the Trial Court is not an Expert to compare the signature on its own, even in the absence of a specific defence taken by the defendant.

10. In these circumstances, the order passed by the Lower Appellate Court in C.M.P.No.839 of 2012 is liable to be set aside. Accordingly, the same is set aside. The petition in C.M.P.No.839 of 2012 in A.S.No.58 of 2011 stands allowed. The defendant shall submit a registered document of the contemporary period before the Lower Appellate Court within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the II Additional Judge, city Civil Court, Chennai is directed to send the disputed signature in the documents marked as Exs. A1 to A8 for comparison with the admitted

signature of the defendant found in the contemporary period to an handwriting expert and after obtaining the report from the hand writing expert, decide the appeal in A.S.No.58 of 2011 on merits and in accordance with law, within a period of two months from the date of submission of the report of the hand writing expert. The Lower Appellate Court is directed to decide the matter independently uninfluenced by any of the observations made in this Civil Revision Petition. No costs. Consequently, the connected miscellaneous petition is closed.

01.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

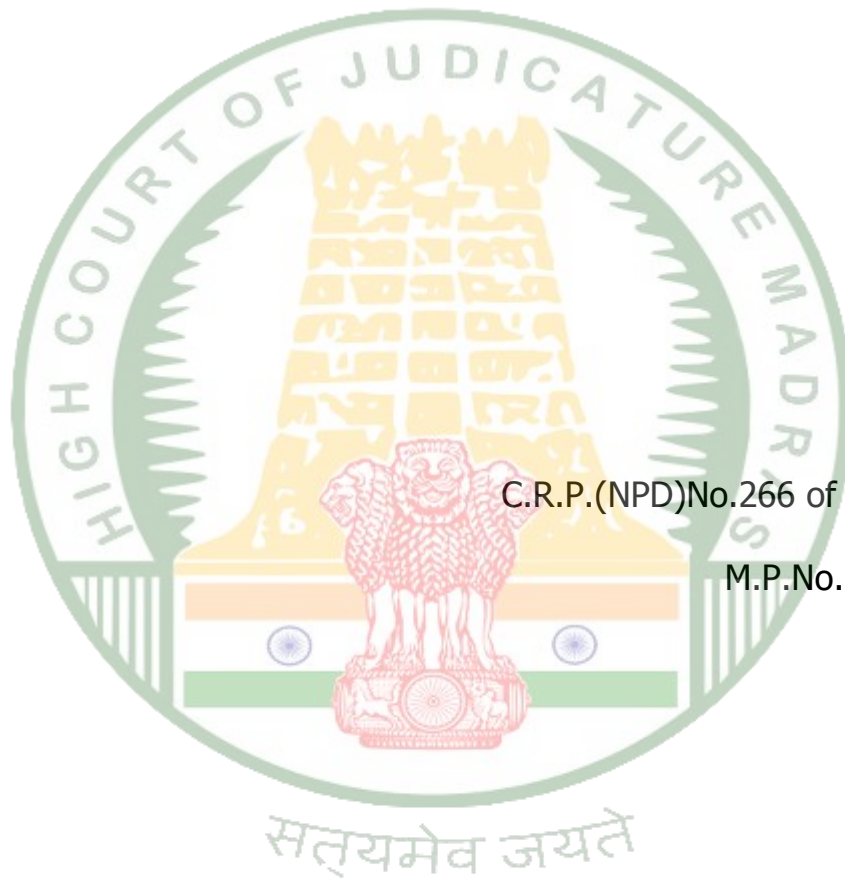
The II Additional Juge,
City Civil Court,
Chennai.

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C.R.P.(NPD).No.266 of 2013

M.DURAI SWAMY, J.

Rj



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