

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 983 of 2019

and

C.M.P. Nos. 6512 and 20073 of 2019

N. Tamilarasi ... Petitioner

-Vs-

S. Anbarasan ... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order in part of the order dated 13.02.2019 made in I.A. No. 652 of 2018 in O.S. No. 94 of 2017 on the file of the learned District Judge, District Court-II, Kancheepuram.

For Petitioner : Mr. S. Senthilnathan

For Respondent : Mr. Sriram

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 652 of 2018 in O.S. No. 94 of 2017 on the file of the learned District Judge, District Court-II, Kancheepuram, by order dated 13.02.2019 .

2. Before the Court below, the respondent / plaintiff laid a suit against the revision petitioner / defendant for recovery of money. It is interesting to note that, the plaintiff and the defendant are brother and sister. The learned counsel appearing for the revision petitioner submits that, it is not a mere suit for recovery of money as the plaintiff / brother had been in a foreign country, out of his earning he wanted to purchase the property in India, so he expressed willingness to get the service and help of the revision petitioner / sister. With the help of her husband, the revision petitioner / sister identified the properties and purchased the same for his brother / plaintiff, some of the properties had been purchased, of course in the name of the defendant / sister. However, the plaintiff / brother after some time had asked the defendant / sister to return back the properties purchased in her name out of the money given by the plaintiff and the sister / defendant also very fairly returned back the property by way of settlement and thought that, the issue would be over by then.

3. However, subsequently the plaintiff has filed the present suit to seek for recovery of money which has been paid by him to the

sister / defendant only to purchase the property thereby according to the revision petitioner, the respondent / plaintiff wanted to have an enjoyment or title over the property purchased out of the money of him on the one hand and also wants back that money also.

4. In this context, the revision petitioner / defendant wanted to produce certain documents to establish her case. Such documents, according to the revision petitioner, is an e-mail communications between the parties, though it has been addressed to the husband of the revision petitioner. When such e-mail communications the revision petitioner wanted to file it, he filed the present application to seek such permission from the Court. However, the said application has been allowed only partly and the trial Court has allowed the said application only in respect of the copy of the settlement deed dated 04.11.2015 and disallowed the plea of the revision petitioner to file e-mail communications probably on the sole ground, wherein a Certificate under Section 65(B) of the Indian Evidence Act was required. Aggrieved over the unallowed portion of the said IA, the present revision has been filed.

5. Heard Mr. S. Senthilnathan, learned counsel appearing for the revision petitioner and Mr. Sriram, learned counsel appearing for the respondent who filed vacate stay petition also.

6. The learned counsel appearing for the revision petitioner would submit that, no doubt, if any document to be filed as per Section 65(B) of the Indian Evidence Act, the Court would insist upon production of the certificate. Without the certificate whether the documents can be marked or not or the document can be accepted or not is the matter to be decided by the Court depending upon the circumstances of the case, of course after hearing the parties.

7. However that issue can be decided only at the time of marking such documents emanated from electronic device for the purpose of filing the said documents, whether Section 65(B) certificate can be insisted upon, is the question.

8. Here in the case in hand even for filing of such e-mail communication, which is the only document i.e., electronic documents,

the lower Court for want of filing of Certificate under Section 65(B) of the Indian Evidence Act, since has rejected the plea of the revision petitioner by disallowing the portion of the IA, such a decision taken by the Court below is erroneous and therefore it requires interference from this Court.

9. However, Mr. Sriram, learned counsel appearing for the respondent / plaintiff would submit that, if it is an e-mail communication, certainly it is a document emanated from the electronic device. When that being the position, as per the mandate of Section 65(B) of the Indian Evidence Act, those documents should be accompanied with certificate under Section 65(B) of the Indian Evidence Act, without which those documents cannot be accepted by the Court below. Therefore, he would further submit that, the learned Judge, in the impugned order has disallowed the said plea, of course rightly, therefore that order does not require interference from this Court.

10. I have considered the rival submissions made by the learned counsel for both sides and perused the materials placed before this Court.

11. No doubt, if at all any document is emanated from the electronic device, the evidenciary value of such document or the admissibility of such document can be decided only depending upon the certificate issued in this regard under Section 65(B) of the Indian Evidence Act, if it is filed before the Court, without which, it is highly doubtful the admissibility of such document emanated from electronic device.

12. However, the said question can be decided at the time of marking the document, as the revision petitioner may have a chance of getting such certificate under Section 65(B) of the Indian Evidence Act and produce before the Court or otherwise he can refrain from marking the document.

13. However at this stage, in respect of filing the said documents as a document on the side of the defendant, whether 65(B) certificate can be insisted upon. This Court in this regard feels that, such eventuality does not arise at this stage, therefore, on that ground, the plea raised by the revision petitioner could not have been rejected

at the threshold as has been done by the learned Judge in the impugned order.

14. In that view of the matter, this Court feels that, the impugned order in respect of the disallowed portion is liable to be interfered with. Accordingly, this Court while disposing this Civil Revision Petition, is inclined to pass the following order :

"(i) That the impugned order disallowing the portion of the plea raised by the revision petitioner in I.A. No. 652 of 2018 in O.S. No. 94 of 2017 is set aside and consequently, a direction is issued to the Court below to permit the revision petitioner to file the document i.e., e-mail communication emanated from the plaintiff to the husband of the defendant. However, the admissibility of the document at the time of marking the same can be decided by the Court below, depending upon the certificate issued in this effect under Section 65(B) of the Indian Evidence Act is produced.

(ii) Therefore for the limited purpose, such document can be accepted as of now for filing."

15. With these directions, this Civil Revision Petition is allowed as indicated above. In respect of the other portion of the order by which the Court below allowed the I.A., permitting the revision petitioner to file certified copy of the settlement deed dated 04.11.2015 on the file of the Court below is unaltered. No costs. Consequently, connect Civil Miscellaneous Petitions are closed.

19.11.2019

Index: Yes / No
Speaking order / Non speaking order

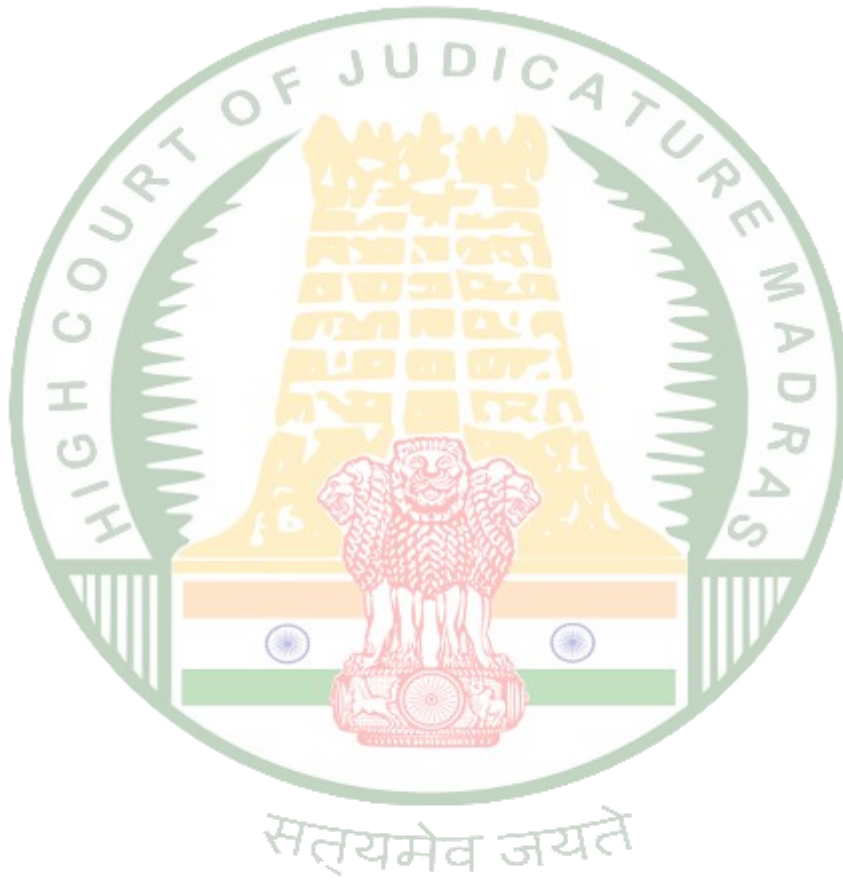
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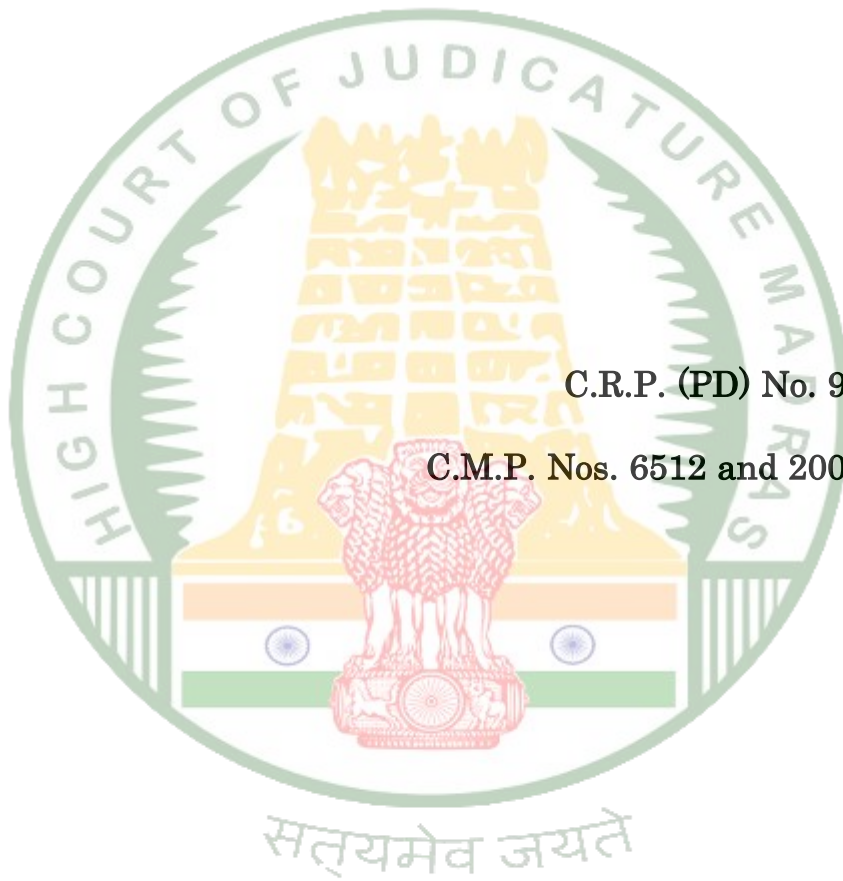
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