IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2019

Coram

The Honourable Ms. Justice P.T.ASHA

CRP(NPD)No.69 of 2016
and
CMP.No.5430 of 2016

K.Subramanian ... Petitioner/Appellant/Petitioner

Versus

Thangarasu ... Respondent/Respondent/ Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order made in I.A.No.1/2015 in A.S.No.5/2014 dated 16.06.2015 on the file of learned Principal District and Sessions Judge, Ariyalur.

For Petitioner : M/S.P.Mahalakshmi
For Respondent : No appearance

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O R D E R

The above Civil Revision Petition is filed challenging the dismissal of the application filed by the appellant/defendant praying to send Ex.X1, Ex.B1 and Ex.B2 for comparing the same with the handwritings

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in Ex.B1 and Ex.B2 with the writings Ex.X1 for expert evidence and to submit a report.

2.The facts in briefs necessary for disposing of the above Civil Revision Petition are as follows:

2.1. The respondent herein had filed a suit for recovery of a sum of Rs.3,86,540/- together with future interest on an acknowledgement note. The contention of the revision petitioner was that the entire loan amount had been paid and necessary endorsement had been made in a diary maintained by appellant/petitioner namely Ex.B1 and Ex.B2. To substantiate the endorsements in Ex.B1 and EX.B2 the plaintiff had cross-examined DW2. The evidence of DW2, however has not been believed by the Court below in view of the fact that DW2 has not signed in Ex.B1 and Ex.B2. Ultimately the suit was decreed in favour of the respondent/plaintiff.

2.2.The said Judgment and Decree was taken up on appeal by the defendant in A.S.No.5/2014. Pending the suit, the impugned petition has been filed by the revision petitioner. The same has been vehemently opposed by the respondent/plaintiff who would inter-alia contend that the application is highly belated and ought to have been taken in the Trial Court and even in the Appellate Court, the application has not been moved in the first instance. The plaintiff/respondent had also contended that there is no reference to

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Ex.B1 in the written statement and there was only reference to Ex.B2 and it is only during the trial that the document has been produced. He would also contend that three documents namely Ex.B1, Ex.B2 and Ex.X1 relates to different periods and therefore, the respondent /plaintiff would contend that it is only contemporaneous documents which has to be sent to the Forensic Department.

2.3.After hearing the parties, the learned Principal District and Sessions Judge, Ariyalur by order dated 16.06.2015 was pleased to dismiss the said application on the ground that the pro-note was of the year 2007 so also Ex.B1 and Ex.B2 however Ex.X1 is dated 21.102014. However Ex.B1 and Ex.B2 were denied on the side of the plaintiff and the defendant/revision petitioner has not taken any steps to produce the contemporaneous documents containing the admitted signature of the plaintiff/respondent. That apart the application is highly belated. With these reasons, the learned Judge had dismissed the said application. Challenging the same the revision petitioner is before this Court.

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3.Heard the learned counsels arguments and perused the papers.

4.The Lower Appellate Court has held that Ex.X1 which is the document handed over with which the signatures found in Ex.B1 and Ex.B2 were sought to be compared is executed nearly seven years

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after the disputed documents and it is an established principle of law that the comparison of signatures and handwriting shall be done only with the contemporaneous documents. Ex.X1 is not a Contemporaneous document. Further the respondent/plaintiff in his evidence has clearly denied the signature and handwriting in Ex.X1 and therefore the defendant ought to have taken steps to prove the signatures by having it compared with documents of the same period at the earliest point of time. The defendant tried to prove Ex.B1 by examining by DW2 which was not accepted by the learned Trial Court Judge. The application now preferred, as rightly pointed out by the Lower Appellate Court, is highly belated.

5.I do not find any infirmity in the order passed by the Court below, accordingly the Civil Revision Petition stands dismissed. No costs. Connected Civil Miscellaneous Petition is closed.

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To
The Principal District and Sessions Judge,
Ariyalur.

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P.T.ASHA, J.,

jrs

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