

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CRP(PD) Nos.2017 and 2022 of 2019

1. Mrs. Annalakshmi
2. M. Muthukrishnan
3. M. Vijay

.. Petitioners in both CRPs

-vs-

Mrs. V. Sasirekha

.. Respondent in both CRPs

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the common order of dismissal made in I.A.Nos.14594 of and 14595 of 2018 in O.S.No.1308 of 2017 dated 20.2.2019 by the IV Additional Judge, City Civil Court, Chennai to re-open and recall the evidence of PW1 and direction to the respondent to produce her Bank Pass book maintained with HDFC Bank, Chennai and Bank of India, Chennai and allow I.A.Nos.14594 and 14595 of 2018 in O.S.No.1308 of 2017.

For Petitioner in both CRPs. : Mr.T.P. Kathiravan

For Respondent in both CRPs : Mr. J. Suresh for

Caveator

COMMON ORDER

These petitions are filed by the petitioners/defendants against the common order of dismissal made in I.A.Nos.14594 of and 14595 of 2018 in O.S.No.1308 of 2017 and a direction for production of Bank Passbook maintained at HDFC Bank and State Bank of India by

the respondent/plaintiff for proving that the petitioners/defendants have discharged the loan obtained from the respondent/plaintiff.

2. The defendants are the petitioners before this Court.

3. The respondent/plaintiff filed a suit for recovery of money on the basis of the loan agreement executed by the petitioners on 18.3.2015. During trial, the respondent/plaintiff has stated that she has account in HDFC Bank and she cannot produce the pass book without the permission of her husband. Taking the said statement as an admission, the petitioners have filed petitions in I.A.Nos.14594 of and 14595 of 2018 in O.S.No.1308 of 2017 seeking to reopen the evidence of PW1 and to direct the plaintiff/respondent to produce her Bank Account pass books maintained with HDFC Bank, Chennai and State Bank of India, Chennai.

4. In the course, the petitioners have not made out a specific case or clear case as to when and where the money was given to the plaintiff and in which bank account it was deposited and the said deposit made was towards the discharge of their debt.

5. The trial court has rightly found that the transaction in the

bank account of the plaintiff/respondent will not automatically prove that money deposited in her account was given by the petitioners. Without any specific proof, the plaintiff/respondent cannot be directed to produce her bank pass book. It is the burden of the petitioners/defendants to prove that they have discharged the loan. On the other hand, the petitioners cannot compel the other side in this case the plaintiff/respondent to produce documents to prove their case.

6.This Court, in the case of **V.P.Subramaniam Vs. P.Saraswathi reported in (2003) 1 M.L.J.556**, in paragraph 13, has held as follows;

'13. Coming to the contention of the learned counsel for the petitioner that the petitioner has got every right to file the petitions of present nature seeking a direction to examine the respondent as a witness, this Court is of the view that no party to the proceedings can be compelled to give evidence in a Court of law at the instance of the order. It is always open to the Court to draw an adverse inference by the conduct of the party, who keeps away from the witness box. When that be the principle, it is not known as to how a defendant in the suit can be permitted to be examined as a plaintiff witness. Virtually, it may amount to compel the

defendant to appear as a witness of the plaintiff and depose against her. If not, she will be subjected to unnecessary questions, which may not be warranted in the nature of the proceedings. Taking into consideration of all these factors, this Court is of the view that the civil revision petition is devoid of any merits. '

7. In view of the above judgment, I do find that by making OMNI BUS statements, the petitioner cannot call for documents from other side and fish out evidence from them. Therefore the petitions seeking to recall PW1 and a direction to produce the bank passbook are not sustainable. Viewing in right perspective, the trial court has dismissed those petitions. Hence the Civil Revision Petitions merit no consideration and accordingly the same are dismissed. No costs. Consequently, connected CMP.No.13093 of 2019 is closed.

सत्यमेव जयते

25.06.2019

msr

Index:Yes/No

Internet:Yes/No

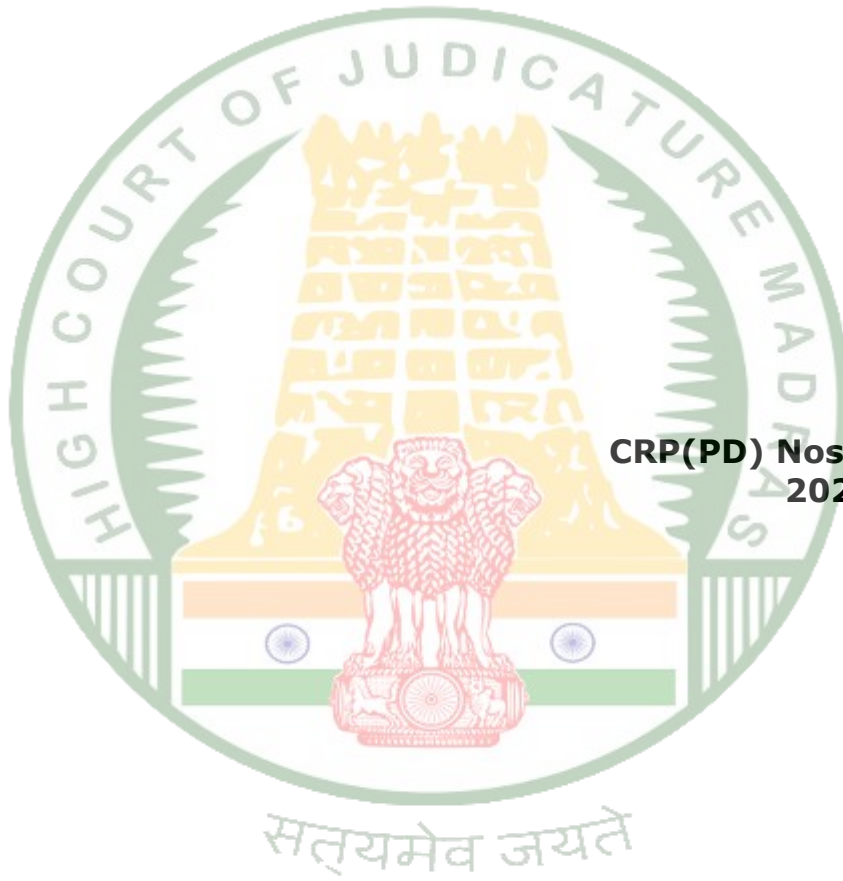
To

The IV Additional Judge, City Civil Court, Chennai.

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M.GOVINDARAJ, J.

msr



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