

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 26.11.2019

Orders Pronounced on : 04.12.2019

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THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.PD.No.2756 of 2014
and M.P.No.1 of 2014

M.Panneerselvam ..Petitioner

Vs.

M.Sundaramoorthy ..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order dated 17.03.2014 passed in I.A.No.716 of 2011 in O.S.No.255 of 2008 on the file of the learned Subordinate Judge, Vellore.

For Petitioner : Mr.M.Uma Shankar

For Respondent : Mr.S.Deivasigamani

ORDER:

The defendant in O.S.No.255 of 2008 on the file of the learned Subordinate Judge, Vellore is the petitioner. Before the said court, the

respondent herein filed a suit as against the revision petitioner and seeking the relief of direction directing the respondent to pay to the plaintiff the suit amount of Rs.2,52,733/- together with future interest at the rate of 24% per annum. When the suit was pending for trial, the petitioner / defendant filed an application under Order 26 Rule 10(a) (i) and Section 151 of Code of Civil Procedure in I.A.No.716 of 2011 and pleaded to send the suit pro note along with the admitted signature of suit summons, vakkalath or any other admitted document to the Director, The Forensic Science Laboratory Department, Kamarajar Salai, Chennai-4 for comparison of handwriting and to report the same through an Advocate Commissioner.

2.The learned Subordinate Judge, Vellore after affording an opportunity to the respondent herein by order dated 17.03.2014 dismissed the application filed by the petitioner. Aggrieved over the said finding, the petitioner is before this Court with the present Civil Revision Petition.

3.Today when the petition is came up for hearing, the learned counsel appearing for the petitioner is present and would contend that before the day on which the alleged suit promissory note was executed, the petitioner was having loan transaction with the

respondent and for which the petitioner gave two blank promissory note with the signature of the petitioner. Since there is a dispute in respect to the earlier transaction, the petitioner copied the signature of the petitioner found in the earlier blank promissory note and created forged pro note. Therefore comparing the signature found in the suit pro note is necessary to prove the case of the petitioner.

4. On the other hand, the learned counsel appearing for the respondent would contend that before filing the suit by the respondent, the defendant has sent a notice to the petitioner, in which he requested the respondent to return the two blank cheques and two signed blank promissory notes. Therefore, the petitioner alternatively admitted the signature found in the suit promissory note thereby questioning to send the suit pro note to the handwriting expert is not at all aroised. Only with the above observations, the trial court has also dismissed the application filed by the petitioner.

5. Now on go through the impugned order passed by the trial court, it is true contending that in the letter sent to the respondent / plaintiff, it was admitted on the side of the petitioner itself that the respondent is having two signed blank promissory notes signed by the petitioner. Therefore, in respect to the signature there was no dispute

arosed and accordingly the petition filed by the petitioner is not having any merits.

6.Now upon considering the arguments advanced by either side, it is true, before filing the suit on 29.09.2008, the counsel appearing for the petitioner sent a notice to the counsel appearing for the respondent by stating that the respondent is having signed two blank promissory notes and two signed blank cheques, and are all signed by the petitioner. Though the contentions of the petitioner is that, those documents were given to the respondent before alleged transaction, the same has not been reflected in the notice dated 29.09.2008. Since the present suit is filed on 03.12.2008, if the contention of the petitioner is true one, definitely he would have stated the entire things in the notice dated 29.09.2008. More than that, since the suit is filed for recovery of amount based on the pro note, it is for the plaintiff / respondent to prove the execution of suit pro note. Hereafter the duty is vested with the petitioner, only to prove that the promissory note has not been executed on proper consideration. Therefore the duty is not cast upon the petitioner to prove the genuineness of suit promissory note. The trial court also came to the same conclusion and dismissed the application filed by the petitioner.

7.Though it was contended that in the written statement filed by the defendant as the alleged promissory note is forged one, as per the averments set out in paragraph 6, the petitioner himself admitted till filing of the suit, the respondent herein not returned his blank cheques and blank promissory notes. Further, the petitioner himself admitted for the notice dated 29.09.2008, the respondent herein sent a reply notice after denying the averments made in the notice. So the probability in creating the forged promissory note is lesser than ordinary sense.

8.Only at the time when the court finds that the defendant has executed promissory note, then only the burden is to prove that there is no consideration on the defendant. In the application filed by the petitioner, he wanted to compare the signature found in the suit promissory note with the signature found in the vakalat, suit summons and the signature found in the written statement. In the said occasion, I am of the opinion since the probability of creation of forged promissory note is less than the other case, applying the Section 73 of Indian Evidence Act is sufficient to find out the case of the defendant. Section 73 of Indian Evidence Act empowers the court to compare the disputed signatures with the admitted signatures. The observation of the court that by mere looking at the signatures of the respondent on

the disputed document with those admitted documents showed that signature on disputed document were not of the respondent was also be admissible and correct. Therefore, the case of the petitioner himself positively admitted that two unfilled promissory notes with the signature of the petitioner are in the custody of the respondent, and there is no necessity for the respondent to prepare a forged note. So the said defence of the petitioner enables this Court that sending the suit promissory note for chemical examination will lead further delay in finishing the suit before the trial court. In fact, the trial court is having the power to compare the signature found in the documents. Though the same was not safe, now considering the fact the suit has been filed in the year 2008 and also for the reason that the defendant has faced trial with the inconsistent plea, it is enough to decide the case of the defendant by applying the Section 73 of Indian Evidence Act due to which defendant / petitioner is noway prejudiced.

9. In the light of the above discussions, I am of the opinion that in the impugned order passed by the court below there is no material irregularity and the Civil Revision Petition is liable to be dismissed. However, the trial court is directed to dispose the suit without being influenced by the observations made in this order, within a period of three months from the date of receipt of a copy of this order.

10.With the above observations, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.
No costs.

04.12.2019

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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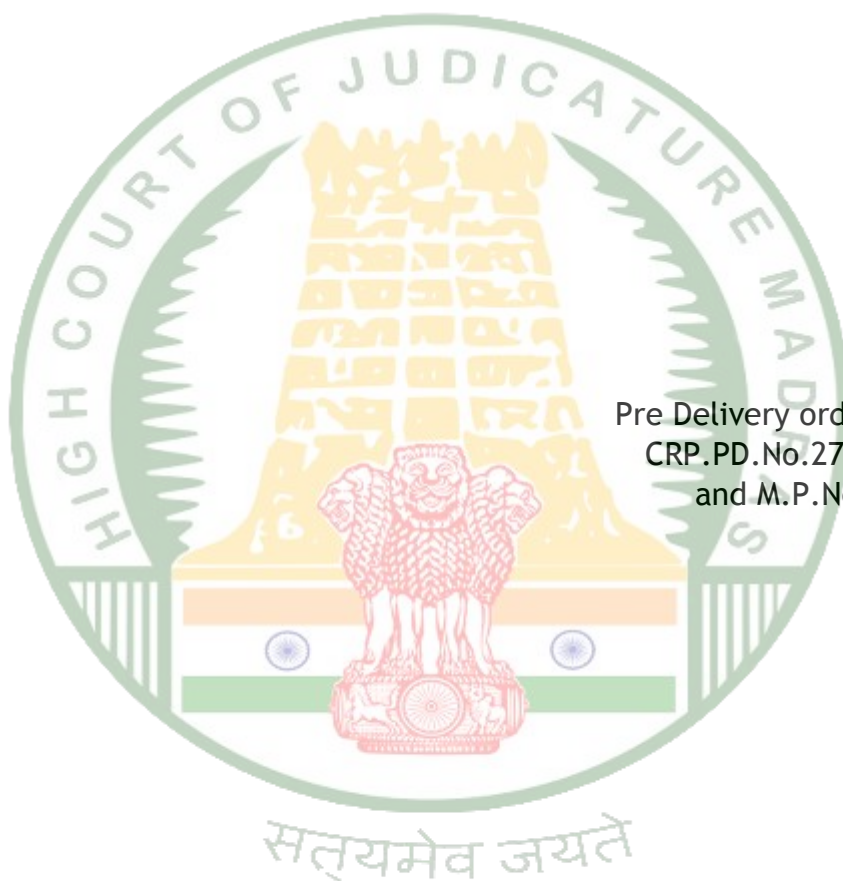


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R.PONGIAPPAN,J.

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To
The learned Subordinate Judge,
Vellore.



Pre Delivery order made in
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and M.P.No.1 of 2014

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