

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.07.2019**

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD)No.2835 of 2014
and M.P.No.1 of 2014

N.Meenakshi Sundaram ...Petitioner

vs.

C.T.Padmanabhan ...Respondent

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the order and decreetal order of the Sub Court, Arni dated 5.2.2014, passed in I.A.No.129 of 2013 in A.S.No.61 of 2012.

For Petitioner : Mr.S.Baskaran

For Respondent : No Appearance

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 05.02.2014, passed by the Sub Court, Arni in I.A.No.129 of 2013 in A.S.No.61 of 2012.

Brief facts leading to the filing of the instant revision:

2.The respondent filed a suit O.S.No.201 of 2004 against the petitioner before the District Munsif Court, Arni for recovery of a sum of Rs.30,000/- together with interest and costs based on a promissory note allegedly executed by the petitioner in favour of the respondent. The said suit came to be decreed in favour of the respondent on 02.09.2004.

3.Aggrieved by the judgment and decree passed in O.S.No.201 of 2004, the petitioner preferred an appeal before the Sub Court, Arni in A.S.No.61 of 2012.

4.During the pendency of the appeal, the petitioner filed I.A.No.129 of 2013 in A.S.No.61 of 2012 to send the suit promissory note for Handwriting Expert's opinion under Order 26 Rules 9 and 10 CPC. According to him, as seen from the affidavit filed in support of I.A.No.129 of 2013, the trial Court has not scrutinized the suit promissory note and has simply believed the oral evidence of PW1 to PW3 and decreed the suit in favour of the respondent.

5. According to him, in order to disprove the claim of the respondent, the suit promissory note will have to be analysed by Handwriting Experts and only if the opinion of the Handwriting Experts is available, the genuineness of the suit promissory note can be considered by the Court. Along with the application, the petitioner also filed a sale deed containing the undisputed signature of the respondent. A counter was also filed by the respondent/plaintiff in I.A.No.129 of 2013 denying the allegations made by the petitioner and stating that only to protract the proceedings, the petition has been filed by the petitioner and it is his case that the said petition was also filed belatedly. By order dated 05.02.2014, I.A.No.129 of 2013 filed by the petitioner was dismissed by the Court below.

6. Aggrieved by the said dismissal, the instant Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India.

7. Heard Mr.S.Baskaran, learned counsel for the petitioner. Despite a counsel having entered appearance on the side of the respondent in this revision, there is no representation on the side of the respondent today.

8. Admittedly, the suit filed by the respondent in O.S.No.201 of 2004, against the petitioner is for recovery of money based on a promissory note allegedly executed by the petitioner in favour of the respondent. The said promissory note was also marked as an exhibit in the suit. On the side the respondent, three witnesses were examined, namely, PW1, PW2 and PW3. If the petitioner disputes the execution of the promissory note in favour of the respondent, he could have very well filed a similar application as was filed in the appellate proceedings before the trial Court, but the same was not done so in the instant case.

9. Further, as seen from the written statement filed by the petitioner in O.S.No.201 of 2004 filed by the respondent, the petitioner has pleaded that there is one more Meenakshi Sundaram and it is he, who borrowed the money and not the petitioner.

10. This being the case, if he is really innocent, he ought to have impleaded Meenakshi Sundaram who, according to him, is the true borrower of money from the respondent. But, as seen from the records, no application has been filed by the petitioner to implead the correct Meenakshi Sundaram, the alleged person according to petitioner, who has really borrowed the money.

11.A Single Bench judgment of this Court relied upon by the learned counsel for the petitioner in the case of ***Palaniammal and Others vs. Palaniswami and Others*** reported in **2003-3-L.W.649** is not applicable to the facts of the instant case. The petitioner has not impleaded the alleged person as a party who according to him, is the real borrower, even though, he has disclosed in the written statement that a person having similar name as that of the petitioner is the real borrower.

12.Since the petitioner has not sought for impleadment of the party, who according to him, is the real borrower of the money from the respondent, the prayer sought by the petitioner in the appellate stage, seeking for Handwriting Expert's opinion on the signature of the petitioner is not maintainable. No request was made by the petitioner before the trial Court for sending the suit promissory note to Handwriting Expert, even though, the said promissory note was very much available as part of evidence before the trial Court.

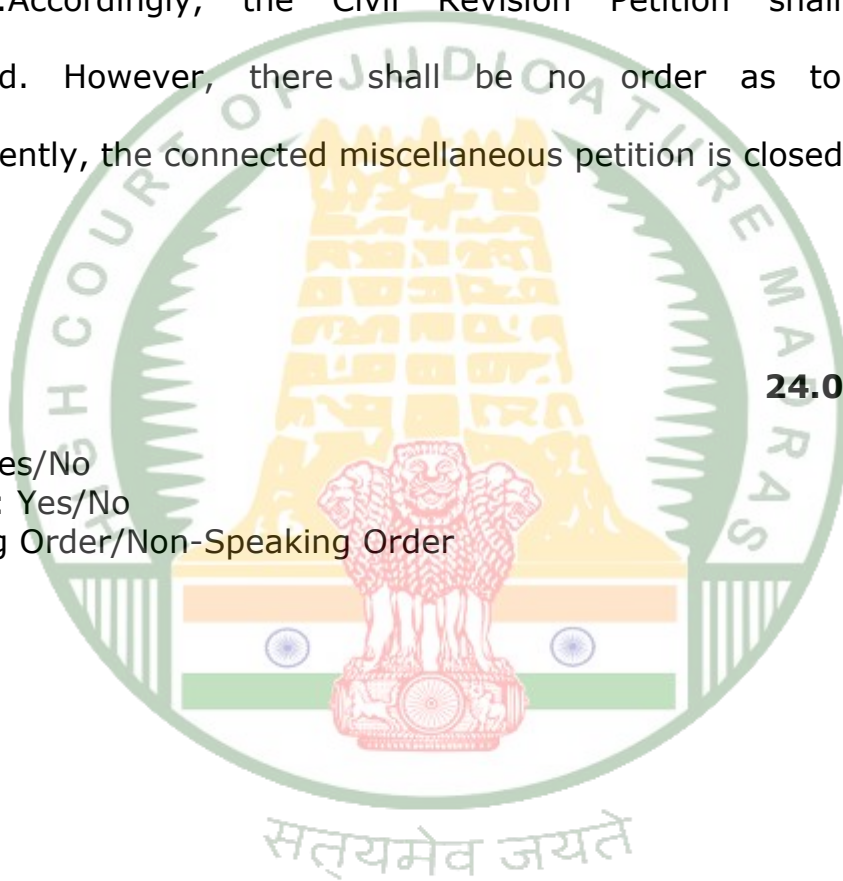
13.This being the case, none of the grounds available under Order 41 Rule 27 CPC for filing documents in the appellate stage has been satisfied by the petitioner.

14. For the forgoing reasons, this Court is of the considered view that there is no infirmity in the order passed by the Court below.

15. Accordingly, the Civil Revision Petition shall stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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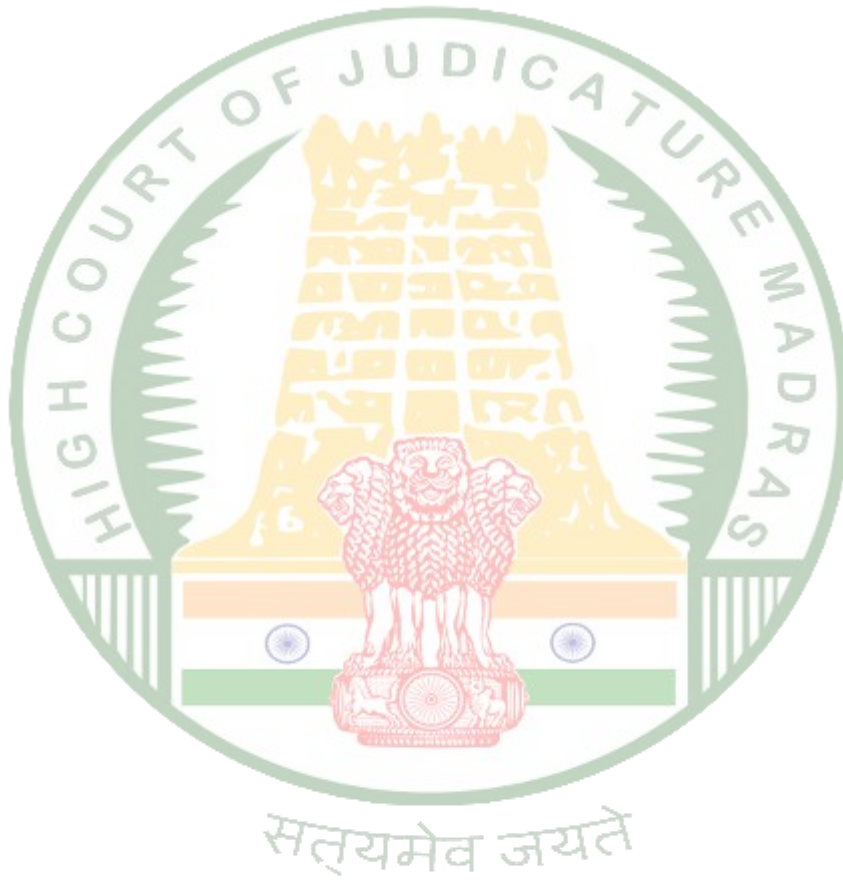
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To

The Sub Court, Arni.



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ABDUL QUDDHOSE, J.

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