

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P. No.2787 of 2019

and

C.M.P.No.18259 of 2019

K.Kumar Petitioner/ Defendant
-Vs-

Sharmila Respondent/ Plaintiff

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 15-07-2019 in I.A.No.6901 of 2018 in O.S.No.3000/2015 on the file of XV Assistant City Civil Judge at Chennai.

For Petitioner : Mr.G.Appavoo

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 15-07-2019 in I.A.No.6901 of 2018 in O.S.No.3000/2015 on the file of XV Assistant City Civil Judge at Chennai.

2. The revision petitioner is a defendant in the suit, who filed the said I.A., before the Court below under Order XVI Rule 2 and 3 (wrongly mentioned as Order 28 Rule 16 read with Section 30 of C.P.C.,) to issue subpoena to the Assistant Director and Documents Expert to bring the report in Document No.115 of 2017 dated 13.06.2017 and to give evidence in the Court. Since the said application has been rejected on merits by the Court below through the impugned order, challenging the same, the present revision petition has been filed.

3. Heard Mr.G.Appavoo, learned counsel for the petitioner, who would submit that, though the report has been sent by the expert and the same has reached the Court in sealed cover, assuming that the report is going to be utilized in the Court as expert opinion, whatever be the opinion, on what basis the said opinion was given, can be elicited from the expert himself and only for the said purpose, the petitioner has filed such

application to issue subpoena to the Assistant Director and Documents Expert and through him, if the document is marked as Exhibit, then the defendant will have a chance to cross examine the said Expert and only for the said purpose, the said application has been filed.

4. I have heard the submissions of the learned counsel for the petitioner and I have gone through the impugned order of the lower Court.

5. The learned Judge, in the impugned order, has stated that, the expert has sent his opinion, which has been received by the Court and once the expert opinion which has been sought for by the Court has been given by the expert, the same can be taken as Court document. This in fact, has been specifically mentioned by the learned Judge in the impugned order, wherein he has stated that, "It is settled position of law that the report of any expert is to be a court document. Therefore, no need to mark the report of the handwriting expert through that expert."

6. In view of the said stand of the learned Judge in the impugned order, this Court feels that, there is no necessity to examine the expert, as the expert report will speak for itself and the same has been considered to be a Court document, which would naturally be relied upon by the Court after completing the trial and accordingly, the report will have its own evidentiary value.

7. In this context, the learned counsel for the petitioner relied upon a decision of this Court in "S.Chinnathai -Vs- K.C.Chinnadurai (2010) 3 MLJ 65" , wherein it was held as follows:-

" 9. The Civil Court shall exercise under Order 26 Rule 10A of the Code of Civil Procedure even when a prayer is sought for the purpose of examining the document."

8. I am in complete agreement with the said view expressed by the learned Judge of this Court, as there can be no quarrel on the said legal proposition. However, in the present case, the learned Judge has stated that even if the expert has to be summoned and a petition was filed to that effect, it is for the Court to decide whether such necessity has arisen and if there is any necessity to that effect, the Court shall not hesitate to summon the expert for examination.

9. Even though the said power is vested with the Court and the present petition has also been filed to issue subpoena to the Assistant Director of the Forensic Department to give evidence on the basis of the expert opinion already given by him, such necessity in this case, has not arisen, because, the

Court has accepted the said report given by the expert as Court document and therefore, by calling the said expert for giving evidence, no new factual matrix is to be ascertained by the Court and it will only be a wasteful exercise. Therefore, the reason given by the learned Judge in the impugned order, in rejecting the application of the petitioner, can very well be accepted by this Court and therefore, it does not require any interference.

10. In that view of the matter, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. However, it is made clear that if the expert opinion, as has been stated by the learned Judge in the impugned order, has not been taken into consideration, at that juncture, or if any such eventuality arises, it is open to the revision petitioner to agitate the issue.

KST

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To
XV Assistant City Civil Judge
Chennai.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.G.Appavu, Advocate, SR.No.78312

C.R.P.No.2787 of 2019

Kak(03.10.2019)

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