

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Reserved on : 13.12.2018****Pronounced on : 14.02.2019****CORAM :****THE HONOURABLE MR. JUSTICE M.S.RAMESH****CRP.(PD).No.2950 of 2018
and
C.M.P.No.19738 of 2018**

R.Kanmani

.. Petitioner

V.

S.Umadevi

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.08.2018 made in I.A.No.84 of 2018 in O.S.No.165 of 2017 on the file of the learned IV Additional District Judge, Ponneri.

For Petitioner : Mr.Prakash Goklaney

For Respondent : Mr.R.Venkat Raman
for M/s.TATVA Legal Chennai**ORDER**

The petitioner's application filed under Order 11 Rule 14 of the Civil Procedure Code, seeking for a direction to the respondent to produce the Original Document No.1 namely, a Loan Agreement dated 15.08.2012, came to be rejected through an order dated

27.08.2018, which order is under challenge in the present Civil Revision Petition.

2. Heard Mr. Prakash Goklaney, learned counsel appearing on behalf of the petitioner and Mr. R. Venkat Raman, learned counsel for the respondent.

3. The trial Court had mainly rejected the aforesaid application on the ground that the defendant had pleaded in his written statement that he is in custody of the original loan agreement and willing to produce the document during the trial. Order 8 Rule 1(A) of the Civil Procedure Code contemplates that where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him. Order 13 Rule 1 of CPC., requires the parties or their pleader to produce on or before the settlement of issues, all the documentary evidences in original where the copies thereof have been filed along with the plaint or written statement. Order 11 Rule 14 CPC., empowers the trial Court to order the production of any documents in the possession of a party relating, to any matter in question in the suit, as the Court shall think right.

4.A co-joint reading of the aforesaid three provisions reveals that there is a duty cast on the defendant to produce all the documents which he relies or bases his defence, along with the written statement and the originals of such documents alone are required to be produced, in view of Order 13 Rule 1 of CPC. The power of the trial Court to order the production of such documents can be derived under Order 11 Rule 14 CPC. As such, there was no infirmity in the relief sought for in the petition, seeking for production of original documents.

5.The trial Court had rejected the petitioner's application on the ground that the defendant is willing to produce the original at the time of trial. There is a specific statement in the written statement that the original of the document sought for is, in her custody. When the law stipulates the procedure to be followed in a particular way, the defendant cannot come up with his own terms and refuse to produce the document. As observed earlier, the provisions of Order 8 Rule 1(A) r/w. Order 13 Rule 1 CPC., mandates the production of original documents. As such, the reliance placed by the trial Court on the statement of the defendant that he is willing to produce the document at a later stage and

thereby rejecting the petitioner's application under Order 11 Rule 14 may not be proper.

6.The learned counsel for the respondent had relied upon a decision of the Delhi High Court in **Aktiebolaget Volvo and others V. R.Venkatachalam and others [Manu/DE/1690/2009]** and submitted that, original need not be produced. I am unable to endorse the view taken by the Delhi High Court in view of the clear and unambiguous terms used in Order 13 Rule 1 r/w. Order 8 Rule 1(A). Even otherwise, the Delhi High Court had not placed reliance on any established precedent. Apart from that, the case before the Delhi High Court was one under 'Infringement of Trademark' where the original documents involved therein were claimed to be used in various litigations through out the world. As such, the said decision may not help the respondent herein.

7.The learned counsel for the respondent also placed reliance on a decision of the Allahabad High Court in **Suresh Chandra Mishra V. State of U.P. and others [Manu/UP/0964/2015]** to high light the powers of the High Court under Article 227 of the Constitution of India. One of the conditions mentioned therein, wherein the powers under Article 227 of the Constitution of India invoked, is an error of law. Since in the instant case, the trial Court

had violated the provisions of Order 8 Rule 1(A) and Order 13 Rule 1 of CPC., the same could be termed as an error in law and therefore the impugned order dated 27.08.2018 is liable to be set aside.

8.For all the foregoing reasons, the order passed in I.A.No.84 of 2018 in O.S.No.165 of 2017 dated 27.08.2018 is set aside. Consequently, the prayer sought for in the application in I.A.No.84 of 2018 shall stand ordered. The Civil Revision Petition stands allowed accordingly. Connected Miscellaneous Petition is closed. No costs.

14.02.2019

Index : Yes

Order :Speaking

DP

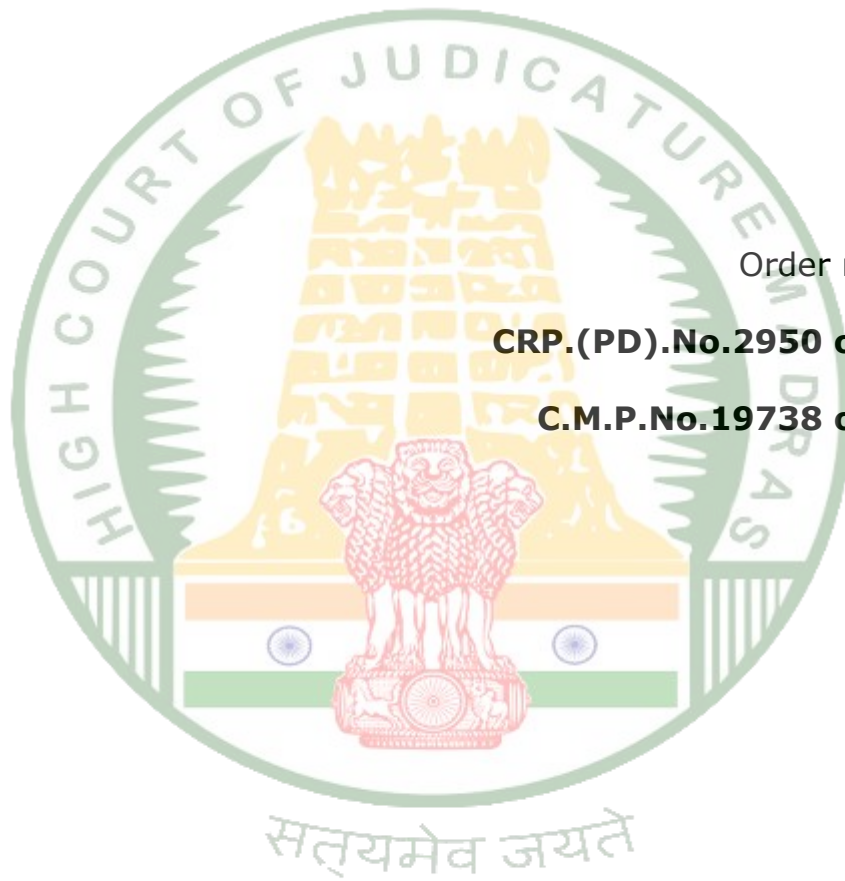
To

The IV Additional District Court,
Ponneri.

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M.S.RAMESH, J.

DP



Order made in

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