



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD) .No.1217 of 2011
and M.P. (MD) .No.1 of 2011

John Christopher

.. Petitioner/Petitioner/
Defendant

Vs.

Wilson

.. Respondent/Respondent/
Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order of the Subordinate Judges Court, Kuzhithurai passed in I.A.No.136 of 2011 in O.S.No.57 of 2002, dated 29.04.2011.

For Petitioner : Mr.S.Wilfred Prakash
For Respondent : M/s.J.Anandhavalli

ORDER

This civil revision petition is preferred by the defendant in the suit as against the order dismissing the petition preferred by the revision petitioner himself in I.A.No.136 of 2011 in O.S.No.57 of 2002 on the file of Sub Court, Kuzhithurai.

2.The brief facts that are necessary for the disposal of this civil revision petition are as follows:

The respondent in this civil revision petition filed a suit in O.S.No.57 of 2002 for specific performance of an agreement of sale alleged to have been entered into by the revision petitioner with the respondent on 29.09.2000. Earlier the suit was decreed ex-parte and the petition filed by the revision petitioner to set aside the ex-parte decree on the ground that the summons have not served on him was allowed. The order was confirmed by this Court in the Civil revision petition preferred by the respondent in this civil revision petition. It was thereafter the revision petitioner filed a written statement in the suit in O.S.No.57 of 2004 in November 2010. It is admitted that nearly after five months, the revision petitioner filed an interlocutory application in I.A.No.136 of 2011 for appointment of an Advocate Commissioner to collect the suit agreement and for



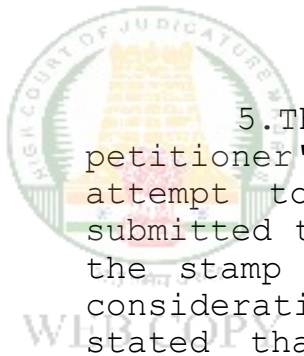
getting an expert opinion by comparing the signatures in Ex.A1 agreement found in first page and the second page. This application was dismissed by the trial Court and aggrieved by the same the defendant in the suit has preferred the above civil revision petition.

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3.The learned counsel appearing for the revision petitioner referred to the written statement filed by the revision petitioner and submitted that he has specifically disputed the signature found in one of the stamp paper used for the suit agreement. In paragraph 12 of the written statement, the revision petitioner has pleaded as follows:

"12.The defendant has not executed and handed over a alleged agreement to the plaintiff. The plaintiff is only a name lender of Kingsly and Sathiyakumar. This defendant has borrowed some amount from Kingsly and handed over a blank signed cheque drawn through the Tamilnadu Mercantile Bank Ltd., Kappucaud and another signed blank stamp paper to Kingsly. Kingsly by utilizing the cheque filed a criminal case in C.C.No.336 of 2002 before the Judicial Ist Class Magistrate Court No.I, Kuzhithurai. Kingsly handed over the Stamp paper to the plaintiff and by utilising the stamp paper the plaintiff filed this suit without any bonafides. The attestors in the alleged agreement are close associates of plaintiff and collection agents plaintiffs. The defendant has not handed over two signed blank stamp paper to Kingsly one of the signature in the stamp paper was forged by the plaintiff and Kingsly and filed this suit. Sathyakumar was a collection agent of Kingsly."

4.In the course of evidence the defendant also admitted that the signature found in the second page of Ex.A1 is his signature. But, he disputed his signature found in page 1 of the document Ex.A1 (suit agreement). Hence, it was submitted by the learned counsel for the petitioner that an opportunity should be given to the revision petitioner to prove his case. However, learned counsel appearing for the respondent / plaintiff submitted that this is a second round of litigation. According to her, the suit filed in the year 2002 was decreed ex-parte in 2005 and the revision petitioner has filed a petition to set aside the ex-parte decree. Though the order of lower court setting aside the ex-parte decree was confirmed by this Court, by an order dated 05.10.2010, learned counsel for the petitioner submitted that the revision petitioner/defendant did not file an application for getting expert opinion immediately after the written statement was filed. Learned counsel for the respondent submitted that the defendant waited for a long time and participated in the proceedings and that this is to drag the proceedings taking advantage of his own evidence during cross examination disputing the signature found in the first page of the suit agreement.

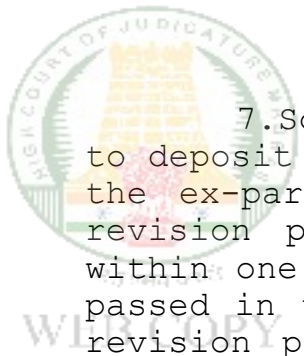


5.The learned counsel further submitted that the revision petitioner's conduct and attitude would show that it is only an attempt to drag on the proceedings. The learned counsel also submitted that the petitioner executed the sale agreement prepared in the stamp papers. Since the respondent has paid the entire sale consideration and spent considered amount towards stamp duty it is stated that, serious prejudice is likely to be caused to the respondent in case this civil revision petition is allowed.

6.This Court considered the rival submissions of either parties. It is true that there is no explanation in the affidavit filed in support of the petition filed by the revision petitioner seeking expert opinion. Even in the application, it is stated that the plaintiff had earlier filed an application for comparison of signatures and that the said application was returned on the ground that the application should be filed for appointment of commissioner to collect the document from the Court and to submit the same to the Forensic Department for comparison. Going by the facts, it is evident that an ex-parte decree was passed in 2005 and the same was later set aside by the lower Court itself and also confirmed by this Court in the civil revision petition preferred by the respondent. It is admitted that by order of this Court, dated 05.10.2010, the civil revision petition preferred by the respondent was disposed of in the following lines.

"Therefore, this Civil Revision Petition is disposed of, on the following lines:-

- (i)The order of the Trial Court is confirmed subject to the conditions imposed hereunder.
- (ii)The Counsel for the petitioner shall serve a memo on Mr.G.Ravindran Nair, learned counsel who appeared for the respondent before the Executing Court, the exact amount of stamp duty paid for the Executing Court to execute the Sale Deed and also the registration charges paid, within two weeks from the date of receipt of a copy of this order. Within four weeks from the date of receipt of the memo, the respondent shall deposit the amount indicated in the memo to the credit of O.S.No.57 of 2002 on the file of the Sub Court, Kuzhithurai along with a sum of Rs.3,000/- towards the cost of paper publications made.
- (iii)Upon the respondent complying with the condition, the application to condone the delay as well as the application to set aside the ex-parte decree will stand allowed. Thereafter, the suit shall be taken up for trial and shall be disposed of within 3 months hereafter."



7. So it was only upon compliance of direction of this Court to deposit the amount by the respondent, the application to set aside the ex-parte decree was allowed. It is not in dispute that the revision petitioner filed the written statement in November 2010 within one month from the date of receipt of the copy of the order passed in the civil revision petition. That is the first time, the revision petitioner has pleaded his defence contesting the suit. Even on the first occasion, the petitioner has disputed the signature in one of the Stamp papers found in the suit agreement. The position was made clear by the revision petitioner in his cross examination where he specifically admits his signature in the second page of said agreement Ex.A1 but consciously disputes the signature in the first page of Ex.A1. The revision petitioner was examined during the month of February second week. However, the application seeking comparison of signatures found in Ex.A1 was filed on 25.04.2011. The affidavit filed in support of the petition disclose valid reasons. The facts and circumstances clearly indicate that the case of revision petitioner is consistent and the only defence that has been raised in the written statement revolves around the proof of his signature in the first page of Ex.A1. It is in the said circumstances, this Court is of the view that an opportunity should be given to the defendant in the suit to prove his case in defence. The lower court has dismissed the petition only on the ground of delay. Delay can be explained by valid reason. Delay will be vital when the court comes to the conclusion that there is no bonafides in the application. However, in the present case, the civil revision petitioner has raised his defence by disputing his signature in the first page of Ex.A1. Dismissing the petition on the ground of delay of about 2 months after the filing of the written statement is inequitable. Learned counsel for the respondent submitted that serious prejudice will be caused to the respondent. As pointed out earlier the money which was spent by the respondent had already been deposited by the revision petitioner. Depends upon the out come of the proceedings, the respondent may be able to get the amount deposited by the revision petitioner before the lower Court.

6. This Court having satisfied that an opportunity should be given to the revision petitioner, is inclined to allow the petition in I.A.No.136 of 2011 on the file of the Subordinate Court, Kuzhithurai. However, the petitioner could have avoided the delay by promptly filing an application immediately after the ex-parte decree was set aside and immediately after the filing of written statement. For the said purpose, this revision petition is allowed on condition that the petitioner pay a sum of Rs.15,000/- to the respondent towards costs within a period of four weeks from the date of receipt of this order. The order of the Sub court, Kuzhithurai dated 29.04.2011 passed in I.A.No.136 of 2011 in O.S.No.57 of 2002 is set aside and the application in I.A.No.136 of 2011 in O.S.No.57 of 2002 on the file of the stands allowed. Since the suit is filed in the year 2002 and is pending nearly for more than 17 years, the Sub Court, Kuzhithurai, is directed to dispose of the suit within a



period of four months from the date of getting the expert opinion.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

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/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge, Kuzhithurai.

+1 CC to M/s.S.WILFRED PRAKASH, Advocate (SR-82083[F]dated 16/08/2019)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-82125[F]dated 19/08/2019)

C.R.P. (PD) (MD) .No.1217 of 2011
16.08.2019

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