

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4212 of 2013
& M.P.No.1 of 2013

M/s.Pradip K.Shah & (HUF)
Proprietor of Shah and Co.,
Represented by Power Agent
Mukesh K.Shah
No.3, Nyniappa Naicken street
Chennai-600 001.

.. Petitioner/Plaintiff

Vs.

Rajesh J.Shah @
Rajesh Kumar J.Shah
No.38, Madox street
Chennai-600 007.

.. Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 16.04.2013 made in I.A.No.13175 of 2012 in O.S.No.12794 of 2010 on the file of the II

Additional Court (In-charge, III Additional Court) City Civil Court,
Chennai.

For Petitioner : Mr.Sandeep Shah
For Respondent : Mr.U.Gowri Shankar

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 16.04.2013 made in I.A.No.13175 of 2012 in O.S.No.12794 of 2010 on the file of the II Additional Court (In-charge, III Additional Court) City Civil Court, Chennai.

2.The petitioner is the plaintiff and respondent is the defendant in O.S.No.12794 of 2010 on the file of the II Additional Court (In-charge, III Additional Court) City Civil Court, Chennai. The petitioner filed the said suit for recovery of money based on the promissory note and deposit of title deeds. The respondent filed the written statement and denied the execution of promissory note as well as deposit of title deeds. According

to the respondent, he has not borrowed any money from the petitioner as he has no intention to start a new business. The petitioner forged the documents and filed the suit. Pending trial, the respondent filed I.A.No.13175 of 2012 under Order XXVI Rule 10A, 10B of CPC read with Section 45 and 67 of Indian Evidence Act, to send the disputed documents viz., (1) Promissory note dated 02.05.2002 (2) Letter for deposit of title deeds dated 04.05.2002 (3) Loan Agreement dated 04.05.2002 and (4) Letter dated 09.12.2004. According to the respondent, he filed I.A. for appointment of Advocate Commissioner to send the disputed documents to handwriting expert to verify the genuineness of the signature affixed in the documents relied on by the petitioner.

2(a) The petitioner filed counter affidavit and submitted that only to drag on the suit, the respondent has filed the present petition. Earlier, when the suit was pending before the Court in C.S.No.554 of 2006, the respondent has not filed written statement within the time limit and he was set exparte. Only after exparte evidence was recorded and documents were

marked, he filed application to set aside the exparte decree. After transfer of suit to the City Civil Court, Chennai and when the suit was posted for trial, the respondent did not appear on various hearings. The suit was posted before the Adhoc Court for recording evidence. The petitioner filed I.A.No.8655 of 2011 to send the documents to handwriting expert. After filing of counter by the petitioner, the respondent filed I.A.No.7335 of 2012 to amend the prayer in I.A.No.8655 of 2011. With the view to further delay, the respondent has filed the present petition and prayed for dismissal of petition.

2(b) The learned Judge considering the averments made in the affidavit and counter affidavit, allowed the Interlocutory Application.

3. Against the said order dated 16.04.2013 made in I.A.No.13175 of 2012 in O.S.No.12794 of 2010, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner submitted that

the learned Judge has failed to refer the judgment relied on by the learned counsel appearing for the petitioner for not sending the document outside the Court premises for verification. While transit, there is possibility of tampering the document. The learned Judge ought to have directed the handwriting expert to inspect the documents in the Court premises itself by taking photocopy of the disputed documents in the presence of the Advocate Commissioner. The learned Judge erred in allowing the application even before the documents were marked as exhibits. The learned Judge ought to have allowed the respondent to furnish document with his admitted signature executed during that period before sending for verification and prayed for allowing the Civil Revision Petition.

5. The learned counsel appearing for the respondent contended that the learned Judge has considered all the materials on record and by giving valid reason, ordered the petition. There is no error in the finding of the learned Judge and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials available on record.

7. From the materials available on record, it is seen that the petitioner filed suit for recovery of money based on the promissory note and deposit of title deeds. The respondent disputed having executed the documents relied on by the petitioner and contended that the petitioner has forged the documents. The respondent filed the application for appointment of Advocate Commissioner to take the documents to handwriting expert with regard to genuineness of the signature in the documents. The petitioner opposed the same. When the signature in the document is disputed by a party, the Court can verify the signature in the disputed document with admitted signature and come to the conclusion with regard to genuineness of the signature in the disputed document. Another method is, the Court can send the document with disputed

signature along with admitted signatures of the contemporary period to handwriting expert to get opinion with regard to the genuineness of the signature with the disputed document. The learned Judge has considered and adopted second method for finding out genuineness of the signature in the disputed documents. The objection of the learned counsel appearing for the petitioner is that in number of cases, the Courts have held that the document should not be sent out of the Court premises. The said contention is acceptable. This Court held that handwriting expert can be called upon to take photocopy of the signature in the disputed document and get his opinion. When the signature is disputed by the respondent, it is for the petitioner to prove the genuineness of the signature. In such circumstances, the signature can be verified by the handwriting expert and give his opinion with regard to the genuineness of the signature with disputed documents.

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8. For the above reasons, the order of the learned Judge is modified as follows :

(i) The respondent is directed to submit his three admitted signatures of the contemporary period within a period of four weeks from the date of receipt of a copy of this order.

(ii) On such furnishing of admitted signatures, the learned Judge is directed to call upon an expert from the Tamil Nadu Forensic Department to inspect and verify the signature in the disputed documents with admitted signature of the respondent in the Court premises, in the presence of Advocate Commissioner and the learned counsel for the petitioner as well as respondent.

9. With the above modifications, the Civil Revision Petition is disposed of. The suit is of the year 2010 and the learned counsel appearing for the petitioner and respondent are directed to co-operate to proceed with the trial. Consequently, connected miscellaneous petition is closed. No costs.

11.09.2020

Index : Yes/No
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To

II Additional Judge
(In-charge of III Additional Court)
City Civil Court, Chennai.



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V.M.VELUMANI, J.

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