

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. No.3323 of 2018
and C.M.P.No.18847 of 2018

Savithiri

.. Petitioner

Vs.

Ramasamy Gounder

... Respondent

Prayer: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Final order dated 20.07.2018 in I.A.No.165 of 2018 in O.S.No.36 of 2017 on the file of the Sub Court, Kangeyam, Tiruppur District.

For Petitioner : Mr.J.Prithvi for
Mr.S.Kaithamalai Kumaran

For Respondent : Mr.C.Ramaraj for
Mr.M.Guruprasad

O R D E R

The defendant in O.S.No.36 of 2017 whose petition for referring a suit promissory note to an expert was dismissed, has come up with this revision.

2. The suit in O.S.No.36 of 2017 was launched by the plaintiff for recovery of money based on a promissory note said to have been executed by the defendant on 25.09.2011. The suit was filed after issuance of a notice during October 2013.

3. The defendant filed written statement on 19.01.2014 denying her signature in the promissory note. A specific plea was taken in the written statement itself to the effect that the promissory note is a forged instrument.

4. The suit that was pending before the Sub Court, Dharapuram was transferred to the Sub Court, Kangeyam and renumber as O.S.No. 36 of 2017. While P.W.1 was in the box, the defendant filed an application in I.A.No.165 of 2018, seeking to refer the document to an expert for comparison. She also produced a document containing her admitted signature which is contemporaneous to the date of the suit promissory note.

5. This application was resisted by the plaintiff mainly contending that the same is belated and hence the same should not be allowed.

6. The learned Subordinate Judge, Kangeyam who heard the application concluded that the application is belated and dismissed the same. The said dismissal has led to this Civil Revision petition.

7. I have heard Ms.J.Preethi, learned counsel appearing for the petitioner and Mr.Ramaraj, learned counsel appearing for the respondent.

8. Mr.J.Preethi, learned counsel appearing for the petitioner would vehemently contend that the trial Court was not right in dismissing the application on the sole ground of delay. She would point out that a specific plea has been urged by the defendant to the effect that her signature in the suit promissory note is forged. Since the burden of proving the signature was on the plaintiff, she expected the plaintiff to take steps. Only when P.W.1 went in to the box, without taking steps, she realised that the plaintiff is not inclined to take steps to have the document referred to an expert and therefore she had come up with the application. She would also point out that once the signature in the promissory note is denied, the plaintiff ought to have taken steps for having it referred to an expert. It was the failure on the part of the plaintiff to take steps that led to the filing of the application by the defendant herein. Therefore, according to her, there is no delay in filing the application.

9. Contending contra, Mr.C.Ramaraj, learned counsel appearing for the respondent//plaintiff would submit that though a written statement was filed in 2014 itself, till filing of the application in 2017, the defendant had not done anything to have the document referred to the expert. According to him, the application itself is only to drag on the proceedings.

10. It must be pointed out that an application for referring the document to an expert is only an attempt by the parties to place the best evidence before the Court. True, the burden is on the plaintiff to prove the execution of the promissory note by the defendant, more so when the defendant denies the signature. But when the plaintiff, despite a written statement having been filed denying the signature, fails to take steps, there is nothing wrong on the part of the defendant to have the document referred to an expert to establish that the signature is forged. These applications should not be dismissed solely on the ground of delay. The Court must advert to the pleadings of the parties also before considering these applications.

11. I am of the considered opinion by dismissing such applications on the ground of delay, the Court is shutting out the best evidence and preventing itself from being in a position to answer the issues that arise in the suit with the aid of best evidence.

12. I am therefore convinced that the trial Court was not justified in dismissing the application on the ground of delay. The Civil Revision petition is therefore allowed, the order of the trial Court is set aside and the application in I.A.No.165 of 2018 will stand allowed . The trial Court is directed to appoint an Advocate Commissioner within 15 days from the date of receipt of a copy of this order to take the documents to the Government Forensic Expert and have them compared. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Kangayam, Tiruppur District

+1 CC to Mr.M.Guruprasad, Advocate sr 25957.

CRP. No.3323 of 2018
and C.M.P.No.18847 of 2018

NSA(CO)
SP(07/10/2020)

सत्यमेव जयते

WEB COPY