



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.05.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)No.2371 of 2019

Palaniappan

.. Petitioner/Petitioner/Defendant

Vs.

Sadaiyappan

.. Respondent/Respondent/Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records of the fair and decreetal order in I.A.No.245 of 2018 in O.S.No.42 of 2014 passed by the learned Additional Sub Judge, Karur dated 12.11.2019 and set aside the same.

For Petitioner

: Mr.K.Balasubramani

For Respondent

: Mr.M.P.Senthil

ORDER

With the consent of both sides counsels, this order is pronounced in the open Court through Video Conference system on 20th May 2020.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.245 of 2018 in O.S.No.42 of 2014 dated 12.11.2019, by the learned Additional Sub Judge, Karur.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.42 of 2014 for a prayer of recovery of money. In that suit, the defendant filed a petition in I.A.No.245 of 2018 to send the pro note for expert opinion.

4.Brief substance of the petition in I.A.No.245 of 2018 is as follows:

The suit was filed on the basis of a fraudulent pro note. The petitioner never borrowed money from the plaintiff. The defendant never executed any pro note dated 01.05.2013. There was a case pending against the wife of the petitioner by name Manimegalai in O.S.No.41 of 2014 and the suit is pending. On 21.12.2013, at about 04.30 p.m., Jegathesan, the husbands of Rajeswari and Palaniammal, mother of Jegathesan and two other persons entered into the house of the petitioner and they threatened him and by coercion, they obtained his signature in three stamped pro notes. No words were written in the pro note. By using one such pro note the suit has been filed. The tamil year, english year, month and date of the pro note is to be compared with the signature of the defendant in the pro note by the expert and to prove the case of the defendant, the pro note has to be sent to the Forensic Department, Madurai.



5. Brief substance of the counter in I.A.No.245 of 2018 is as follows:

It is wrong to state that the petitioner did not execute the pro note. It is wrong to state that the pro note was obtained by coercion. The suit was already decreed exparte. On 08.09.2014, the petitioner filed a set aside petition with delay. After the exparte decree was set aside, P.W.1 and P.W.2 were examined. After getting so many adjournments to cross examine P.W.1, the petitioner has come forward with this petition. There is no necessity to compare the wordings in the pro note with the signature in the pro note. Only with the motive to drag on the case, this petition is filed.

6. The trial Court after considering both sides, dismissed the petition. Against which, the petitioner has come forward with this petition.

7. On the side of the petitioner, it is stated that the averments in the plaint is that the petitioner in his own handwriting has filled up the pro note and that he has written the tamil year, english year and name of the month and date and that the other contents were written by Karthikeyan who is the attestor and that there is a difference in the letters written in the pro note and the signature found in the pro note. The very execution of the pro note is denied in the written statement. It is the duty of the plaintiff to prove the signature but even then the defendant has a responsibility to prove his case. There was already a dispute between the respondent's daughter and the petitioner's wife. There cannot be a borrowal from the plaintiff by the defendant.

8. On the side of the respondent, it is stated that even in the reply notice sent by the defendant, the signature was admitted. The only averment is that the signature was obtained by coercion and was obtained in the blank pro note. The defendant did not dispute the signature. Even in the written statement, it is stated that there is a difference between the signature and the wordings in the pro note. Under Section 20 of Negotiable Instruments Act, a person who sign the negotiable instrument empowers the holder of the pro note to fill up the blanks. The suit was filed in the year 2013 and the written statement was filed in the year 2014. The defendant did not take any steps till the lapse of 4 years. Only to drag on the case, the defendant has filed this petition.

9. The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **Kanthammal and others v. The Sub Registrar and others** in **C.R.P.No.1878 of 2014**, wherein it is stated as follows:

"As already stated, the genuineness of the sale agreement was disputed in the reply notice, which was reiterated in the written statement filed by the



first respondent herein. After examination of P.W.1 to P.W.4 and defendant's side evidence was over, the plaintiffs/revision petitioners filed the application to recall the evidence of P.W.2, which was allowed and he was examined further and when the matter was posted for argument on 13.03.2014, the plaintiffs/revision petitioners filed the application to appoint Advocate Commissioner to hand over the disputed document along with the admitted document to the Forensic department for comparison, which shows the malafide intention of the revision petitioners to protract the proceedings. So I am of the view that the trial Court has considered all the aspect in proper perspective and came to the conclusion. Hence, I do not find any merits in this Civil Revision petition and the same is liable to be dismissed."

10.It is seen that the case of the plaintiff is that the plaintiff and the defendant only has filled up the tamil year, english year, month and date and other particulars are filled up by scribe of the documents. The contention of the defendant is that the signature was obtained in a blank pro note by coercion. When the defendant did not deny the signature, there is no necessity to send the document for expert opinion. Even in this petition, the petitioner has not requested the Court to send the signature for expert opinion. Comparing the signature of the defendant with the other writings in the pro note will not serve purpose.

11.In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. This Civil Revision Petition is dismissed and the order passed in I.A.No.245 of 2018 in O.S.No.42 of 2014 dated 12.11.2019, by the learned Additional Sub Judge, Karur is confirmed. No Costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The Additional Sub Judge, Karur.