

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.3687 of 2015
and M.P.No.1 of 2015

N.Janarthanam ...Petitioner

Vs

R.Thirumalai ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Judgment and decree dated 18.02.2015 made in I.A.No.194 of 2014 in O.S.No.2 of 2013 on the file of the Subordinate Judge, Tiruvarur.

For Petitioner : Mr.B.Ramamoorthy

For Respondent : Notice served
No Appearance

ORDER

The Civil Revision Petition is arising out of the Judgment and decree dated 18.02.2015 made in I.A.No.194 of 2014 in O.S.No.2 of 2013 on the file of the Subordinate Judge, Tiruvarur, thereby allowing the petition filed by the respondent herein to permit him to file additional written

statement.

2.Heard the learned counsel for the petitioner and perused the materials available on record. Even though notice was served on the respondent, name also printed in the cause list, no one has appeared either by person or through his counsel.

3.The petitioner is the plaintiff and filed a suit for recovery of money as against the respondent herein. The case of the plaintiff/petitioner is that the respondent borrowed a sum of Rs.2 lakhs, during the 1st week of August 2012 and towards the repayment of the said amount, he issued cheque dated 09.10.2012, drawn on ICICI Bank bearing Cheque No.102199. On instruction, the petitioner presented the cheque for collection and the same was returned dis-honoured for the reason that the account become dormant.

4.The respondent filed written statement stating that the alleged cheque was lost and the petitioner had knowledge about the loss of cheque. Even then he presented the same for collection as if the respondent borrowed a sum of Rs.2 lakhs. After examining P.W's.1 and 2, the respondent filed a petition in I.A.No.194 of 2014 to receive additional

written statement stating the reason that after taking xerox copy of his family card, voter id along with cheque bearing No.102199, while purchasing the two wheeler, he lost all the documents. Immediately he lodged complaint on 02.07.2012 before the Inspector of Police, Thiruvarur Town Police Station and the same was also duly informed to the Bank.

5.On perusal of P.W.2 evidence, who is the Manager of ICICI Bank revealed that he did not even whisper about the communication sent by the respondent, in respect of loss of the cheque. Further in the additional written statement it was stated that the cheque was utilized by the petitioner due to previous enmity, whereas in the 1st written statement, it is stated that the petitioner and the respondent are known each other and well acquainted with each other and for the past few months there was misunderstanding between them. In the 1st written statement there was no whisper about the lodgment of police complaint as well as the communication to the Banker, in respect of loss of cheque bearing No.102199. Therefore, the respondent introduced new plea that too after examining P.W's.1 and 2. It is nothing but to fill up the lacunae and it is clear abuse of process of law.

6.In view of the above discussion, the order passed in I.A.No.194

of 2014 in O.S.No.2 of 2013 dated 18.02.2015 on the file of the Subordinate Judge, Thiruvarur, is perverse and illegal.

7.Accordingly, the I.A.No.194 of 2014 in O.S.No.2 of 2013 dated 18.02.2015 on the file of the Subordinate Judge, Thiruvarur, is set aside and the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

20.01.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The Subordinate Judge, Tiruvarur.



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G.K.ILANTHIRAIYAN.J,

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