

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.797 of 2021

and

C.M.P.No.6672 of 2021

R.Manoharan .. Petitioner/Petitioner/Defendant

Vs

K.M.Saminathan .. Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of Code of Civil Procedure to set aside the order and decretal order dated 06.08.2020 in I.A.No.159 of 2020 in O.S.No.364 of 2018 passed by the Additional Subordinate Judge, Tiruppur.

For Petitioner .. Mr.C.S.Saravanan

For Respondent .. No appearance

ORDER

The Revision Petition has been filed questioning the order in I.A.No.159 of 2020 in O.S.No.364 of 2018 dated 06.08.2020 which is now pending on the file of the Additional Subordinate Court, Tiruppur.

2.The said Interlocutory Application had been filed by the petitioner who is shown as the defendant in the suit. The suit had been filed by the plaintiff K.M.Saminathan S/o Muthusamy seeking a judgment and decree against the present petitioner to pay a sum of Rs.6,46,250/- together with interest from the date of filing of the suit till the date of realization on Rs.5,00,000/- and also for the costs of the suit.

3.The cause of action of the suit had arisen on 18.12.2016. The present petitioner / defendant had borrowed a sum of Rs.5,00,000/- and had executed a promissory note for the said sum. It is the grievance of the plaintiff that the said amount had not returned back.

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4.The petitioner had also filed written statement. In paragraph 7 of the written statement, he had very specifically stated that there

is a witness P.Saminathan who is the Attester of the Promissory Note and who is working as a Manager and it is also stated that P.Saminathan was running a Finance Company under the name Sakthi Murugan Finance and also financing the purchase of two wheelers and four wheelers and also lending money for the same.

5. Thereafter issues had been framed and the plaintiff also examined his witness. The plaintiff examined himself as PW-1 and also examined P.Saminathan, Attester to the Promissory Note as PW-2. Both the witnesses were also cross-examined. The suit is now posted for recording evidence on the side of the present petitioner / defendant in the suit.

6. At this stage after cross-examining the witnesses for the plaintiff who incidentally were K.M.Saminathan / plaintiff and P.Saminathan / Attester to the Promissory Note, the petitioner herein had filed I.A.No.159 of 2020 taking advantage of Order VI Rule 17 of CPC seeking to amend the written statement. The amendment which was sought was to amend the initial of Saminathan which has been mentioned in the written statement at paragraph 7 from P.Saminathan to K.M.Saminathan.

7.The learned Judge in the course of his order dated 06.08.2020 which is now the subject matter of the present Revision Petition had given two reasons for rejecting the said application namely, that the issues have been settled and the plaintiff has examined himself as PW-1 and P.Saminathan as PW-2 and that the present petitioner / defendant had cross-examined the witness in full. He had also had an occasion to recall PW-1 and cross-examine him further. The questions regarding identity or that the initials mentioned were not correct had not put to either one of the two witnesses. If those questions had been put, then there could have been some reasonableness in seeking amendment of the initial of P.Saminathan mentioned in the written statement. Not having put those questions to the witnesses and not having drawn out any answer either in the affirmative or negative, the petitioner herein cannot seek to amend the written statement behind the back of the plaintiff. It is also pertinent to point out that the further reason given is also correct, namely, that amendment may not be possible, after trial had commenced.

8.I do not find any error in the order of the learned Judge and therefore, this Civil Revision Petition is dismissed. The petitioner herein may give an explanation in his evidence with respect to the

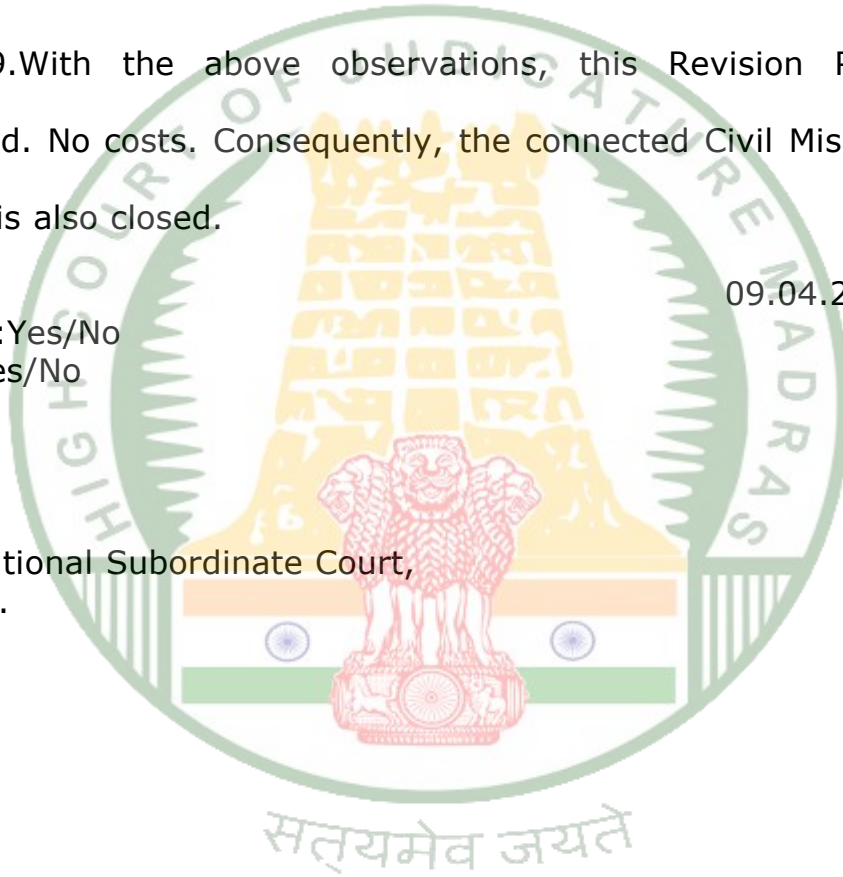
correct name of Saminathan, whether it is P.Saminathan or K.M.Saminathan. But again such evidence can only be appreciated only in the manner in which any evidence without pleadings can be appreciated.

9. With the above observations, this Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

09.04.2021

Internet: Yes/No
Index: Yes/No
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To
The Additional Subordinate Court,
Tiruppur.



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C.V.KARTHIKEYAN,J.



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