

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1756 of 2013
and M.P.No.1 of 2013

Indian Bank

Gudalur Branch

Represented by its Manager

Unnimadavan

Gudalur, The Nilgiris.

... Petitioner

Vs.

Saju George Thomas

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 19.11.2012 made in I.A.CFR.No.4501 of 2012 in O.S.No.32 of 2011 on the file of Sub Court, Nilgiris at Udhagamandalam.

For Petitioner : Mr.M.Sridhar

for M/s.L.Jayakumar Associates

For Respondent : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 19.11.2012 made in I.A.CFR.No.4501 of 2012 in O.S.No.32 of 2011 on the file of Sub Court, Nilgiris at Udhagamandalam.

2.The petitioner is plaintiff Bank and respondent is defendant in O.S.No.32 of 2011 on the file of Sub Court, Nilgiris at Udhagamandalam. The petitioner filed the said suit for recovery of money against the respondent. In the said suit, the respondent was set aside and the suit was posted for recording evidence. The petitioner filed I.A.CFR.No.4501 of 2012 under Rules 75 and 76 of Civil Rules of Practice to send for the documents mentioned in the application from Central Bureau of Investigation, Chennai.

3. According to the petitioner, the original documents are in the custody of Central Bureau of Investigation, Chennai, in connection with the Criminal case in R.C.No.25(A)/2009, dated 22.05.2009 under Sections 420 read with 120B, 420, 409, 467, 408, 477A and 471 of I.P.C. The petitioner further submitted that original promissory note dated 19.10.2007, original Agreement of Hypothecation of movable dated 19.10.2007, original disposal of the proceeds letter dated 19.10.2007 and original statement of accounts are necessary to mark in the above suit to prove the case of the petitioner.

4. The learned Judge rejected the said application on the ground that the petitioner has not made any averments about the alleged custody of the documents by Central Bureau of Investigation, Chennai.

5. Against the said fair and decretal order dated 19.11.2012 made in I.A.CFR.No.4501 of 2012 in O.S.No.32 of 2011 rejecting the application, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner contended that the learned Judge mis-interpreted the provisions of Order VII Rule 14(1, 2 & 3) of C.P.C. and failed to see that the documents relied on by the petitioner Bank can be produced by them at the time of hearing with the leave of the Court, if not filed at the time of filing the suit. The learned Judge also failed to see that the petitioner in paragraph 5 of the plaint has stated that original documents are with C.B.I. in connection with investigation of criminal case. The learned Judge erred in stating that the petitioner failed to mention in the plaint about the custody of the documents. The respondent was already set exparte in the suit and prayed for setting aside the order of the learned Judge and allowing the I.A.

7.The respondent was served by substitute service by effecting paper publication in Makkal Kural dated 13.08.2021. Though his name is printed in the cause list, there is no representation for him either in person or through the counsel.

8.Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

9.From the materials available on record, it is seen that the petitioner while filing the suit for recovery of money from the respondent has mentioned the documents relied on by them to prove their case. In paragraph 5 of the plaint, it has been stated as follows:

“5.The plaintiff state that all original documents pertaining to the transaction in this case is presently in the custody of C.B.I. of Chennai as the same has been taken in connection with the investigation of a criminal case in RC.No.25(A)/2009 dated 22.05.2009 under Section 420 read with 120B, 420, 409, 467, 408, 477(A) and 471 of I.P.C. The photocopies are filed herewith and the originals will be produced at the time of trial.”

10.While it is the specific case of the petitioner/plaintiff that original documents are in the custody of C.B.I., Chennai, in connection

with criminal case, the learned Judge erred in holding that the petitioner failed to mention about the alleged custody of the original documents. As per Order VII Rule 14(1) of C.P.C., the plaintiff must produce the documents relied on by him, which are in his possession or in power in the Court, when the plaint is presented either the original documents or the copies thereof. As per Order VII Rule 14(2) of C.P.C., the plaintiff must produce a list of documents, which are not in his possession or power and to state, who is having custody of the documents. As per Order VII Rule 14(3) of C.P.C., if the plaintiff fails to produce the document along with plaint or not mentioned in the list, those documents cannot be produced without leave of the Court to be marked in evidence.

11. In the present case, the plaintiff has given the list of documents and copies thereof along with plaint. In paragraph 5 of the plaint, the petitioner has stated that original documents are in the custody of C.B.I., Chennai. As rightly pointed out by the learned counsel for the petitioner, the learned Judge erroneously held that there is no averment about the

custody of the documents by C.B.I. Department. The said reasoning of the learned Judge is contrary to the averments made in the plaint. In any event, as per Order VII Rule 14(3) of C.P.C., the Court has power to grant permission to the plaintiff to produce the documents, which were mentioned in the plaint. In the present case, the plaintiff is seeking permission to send for the documents mentioned in the application from C.B.I., Chennai. The learned Judge has not exercised his jurisdiction properly and the order of the learned Judge suffers material irregularity. For the above reasons, the order of the learned Judge is liable to be set aside and is hereby set aside. I.A.CFR.No.4501 of 2012 in O.S.No.32 of 2011 is allowed.

12.In the result, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet: Yes/No

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C.R.P.(PD)No.1756 of 2013

V.M.VELUMANI,J.

Kj

To

The Subordinate Judge

Nilgiris at Udhagamandalam.



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