

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2021

CORAM:

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD).No.754 of 2021
and C.M.P.No.6212 of 2021

B.Dhoss

.. Petitioner

Vs.

Ganesan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.01.2020 passed in I.A.No.1181 of 2017 in O.S.No.3069 of 2015 on the file of the V Assistant City Civil Court, Chennai is liable to be set aside.

For Petitioner

: Mr.P.Thirupathi Raj

ORDER

This Civil Revision Petition has been filed against the order dated 20.01.2020 passed in I.A.No.1181 of 2017 in O.S.No.3069 of 2015 on the file of the V Assistant City Civil Court, Chennai.

2. The petitioner herein had filed applications in I.A.No.1181 of 2017 and also I.A.No.1182 of 2017, seeking appointment of an Advocate Commissioner under Order 26 Rule 10A of the Code of Civil Procedure to take the original promissory note which is the subject matter of the suit dated 28.08.2012 and already marked as Ex.A1 along with the plaint, affidavit and vakalat filed in O.A.No.5814 of 2011 which is pending on the file of the IV Assistant City Civil Court, Chennai to the Forensic Department for comparison and obtain expert opinion and also to send the original plaint, vakalat filed in O.S.No.5814 of 2011 pending on the file of the IV Assistant City Civil Court, Chennai for comparison with Ex.A1 promissory note.

3. It is the contention of Mr.P.Thirupathi Raj, learned counsel for the petitioner that the petitioner / defendant had questioned his signature in the promissory note and had raised serious objection with respect to the execution of the promissory note itself. Learned counsel further stated that on appreciation of that particular stand of the petitioner, leave to sue was also granted and the parties had been invited to adduce evidence. The disputed promissory note on the basis of which the suit had been filed by the respondent / plaintiff had been marked as Ex.A1. The petitioner questioned his signature in the same. He claimed that the signature found in the promissory note is not his signature. To substantiate that particular averment, the petitioner relies on the original plaint, vakalat and affidavit filed in O.S.No.5814 of 2011 which is pending on the file of the IV Assistant City Civil Court, Chennai. The copies of those documents were produced before the learned trial Court.

4. In paragraph 9 of the Order now called into question by the learned counsel it had been stated that the learned Judge had given a perusal of the vakalat, written statement and affidavit filed in O.S.No.5814 of 2011 and had formed a opinion that the signature of the present petitioner in the

said documents vary from document to document and therefore a further opinion had been further formed that the petitioner is in the habit of putting different signatures in the documents. It has therefore been stated that it is no wonder that the signature found in the promissory note is different. The petition was dismissed.

5. Questioning that order, the learned counsel for the petitioner stated that it is very evident that the signature of the petitioner is different as found in the promissory note and that it requires detailed enquiry. Therefore, learned counsel stated that the order now impugned has to be interfered with.

6. It is seen that the promissory note had been marked as Ex.A1. Evidently, the plaintiff is in the witness box. Even before the petitioner can claim that the signature found in the promissory note is not his signature, a basis for claim has to be established. The promissory note will have to be put to the witness and questions regarding the signature will have to be addressed to the witness.

7. Let the petitioner therefore get the liberty to lead evidence with

respect to the circumstances surrounding his allegations that the signature is not his signature and tender evidence with respect to the same. This evidence will also have to be subjected to cross examination. The evidence of the petitioner will have to withstand the test of cross examination. Only thereafter, if required, on appreciation of the evidence will any necessity arise for the Court to invite either the petitioner or the Court by itself to forward the disputed document for comparison with admitted signatures.

8. I would rather that liberty is granted to the petitioner to adduce evidence in the case and thereafter, seek comparison of the signature in the promissory note with admitted signatures in other documents. The petitioner must also keep in mind that his own signature in O.S.No.5814 of 2011 vary from document to document. Insofar as the plaint, vakalat and affidavit filed in the said suit are concerned, the petitioner will have to give necessary explanation, as to how those signatures are different from document to document.

C.V.KARTHIKEYAN, J

rna

9. With these observations, this Civil Revision Petition is dismissed. However, liberty is granted to the petitioner to file similar application at appropriate stage of trial if required. No costs. Consequently, connected miscellaneous petition is closed.

07.04.2021

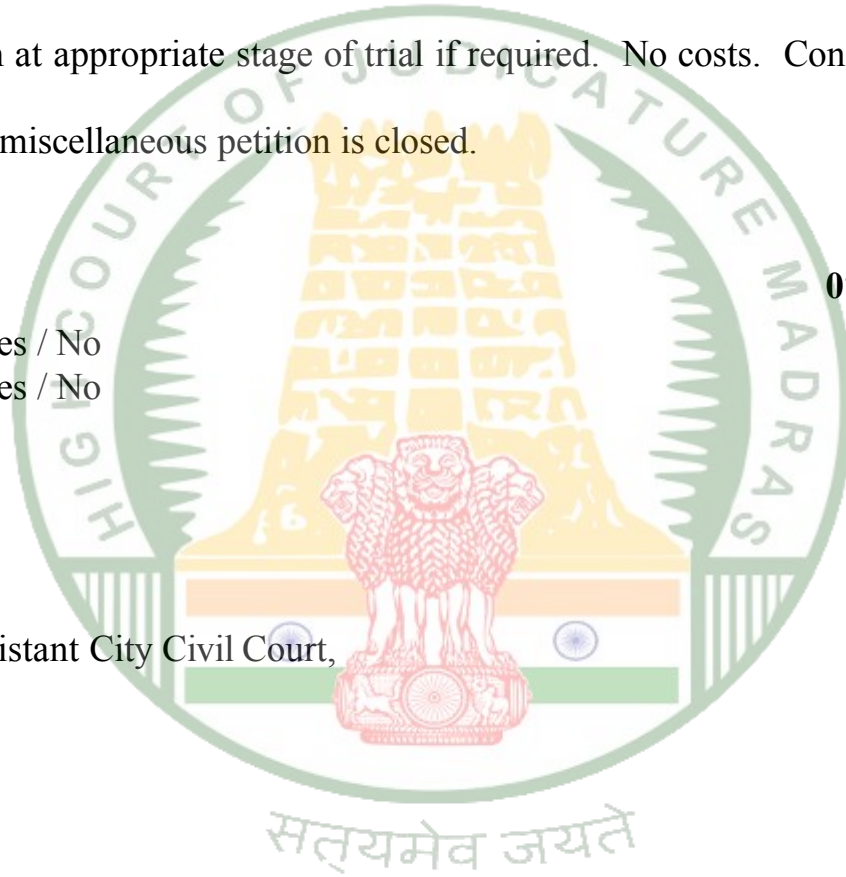
Index : Yes / No

Web : Yes / No

rna

To

The V Assistant City Civil Court,
Chennai.



C.R.P.(PD).No.754 of 2021
and C.M.P.No.6212 of 2021

WEB COPY