

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

Coram

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

C.R.P. (NPD) No.644 of 2021
and
C.M.P.No.5542 of 2021

P.Anbucheziyan

..

Petitioner/Petitioner/Defendant

Vs

M.Selvaraj

..

Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 14.07.2020 passed in I.A.No.346 of 2019 in O.S.No.224 of 2016 on the file of the Principal Subordinate Court, Kallakurichi.

For Petitioner

..

Mr.N.Manoharan

For Respondent

..

No appearance

ORDER

The present Civil Revision Petition has been filed by the defendant in O.S.No.244 of 2016. The suit had been filed by the plaintiff before Sub Court, Kallakurichi, seeking a judgment and decree against the defendant for recovery of a sum of Rs.8,89,000/- together with interest and also for costs.

2.The suit had been filed on the basis of a promissory note dated 27.06.2013. Subsequent to the execution of the promissory note, plaintiff claimed, that a notice had also been issued on 04.05.2016 and though the defendant received the notice they did not sent any reply.

3.The petitioner/defendant herein filed a written statement questioning the execution of the promissory note. The copy of the promissory note had been filed along with the typed set and the learned counsel for the revision petitioner invited the court to examine the signature found on the promissory note both on the revenue stamp and below the revenue stamp. It is the opinion of the learned counsel that the signatures differ and such difference is perceivable even to the naked eye. However, there is also a thumb impression which has been affixed in the promissory note, probably that of the petitioner herein.

<https://www.mhc.tn.gov.in/judis/> 4.The burden lies heavily on the petitioner, as defendant to

forward the promissory note for comparison, if not the signature, atleast to verify the thumb impression, as an opinion by a fingerprint expert would be more exact in nature than the opinion of a hand writing expert. The petitioner herein did not taken any such step. He took a decision not to participate in the judicial proceedings.

5.The suit went through its normal course and it was decreed. Thereafter execution petition in E.P.No.59 of 2018 was also filed. Then the petitioner filed I.A.No.346 of 2019 seeking to condone the delay of 307 days to set aside the exparte decree. It is stated that the petitioner had suffered from jaundice and was bedridden and was not able to appear before the Court.

6.However, it is quite common knowledge that after filing of the written statement during the trial proceedings, there is also an obligation on the part of the learned counsel to appear before the Court and participate in the trial proceedings. The actual physical presence of the petitioner would only be required when he is called upon to lead evidence in his capacity as defendant.

7.The learned Judge in the course of his order dated 14.07.2020,

which is now being questioned in the revision petition, had stated that the petitioner had appeared in the Original Suit on 26.10.2016 and thereafter time was granted for filing written statement on 09.11.2016 and 20.12.2016, 20.01.2017, 07.02.2017, 17.04.2017 and then finally on 25.07.2017, he filed the written statement. The contention of the petitioner that he suffered from jaundice was rejected by the learned Judge. He was also observed that medical records had not been produced. He also stated that E.P.No.59 of 2018 was pending at the stage of disposal and that the petition had been filed without any bonafide reasons.

8.I do not find any reason to interfere with the said order. It is the petitioner's choice to either participate in the judicial proceedings or abstain from participating in the judicial proceedings. There is no compulsion on him to take one choice or the other. It would have been prudent had he participated in the judicial proceeding. At the last stage of the execution petition proceedings, it would be highly inappropriate to set the clock back and condone the delay of nearly about a year and put the proceedings in reverse motion.

9.In view of the above observations, the Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

22.04.2021

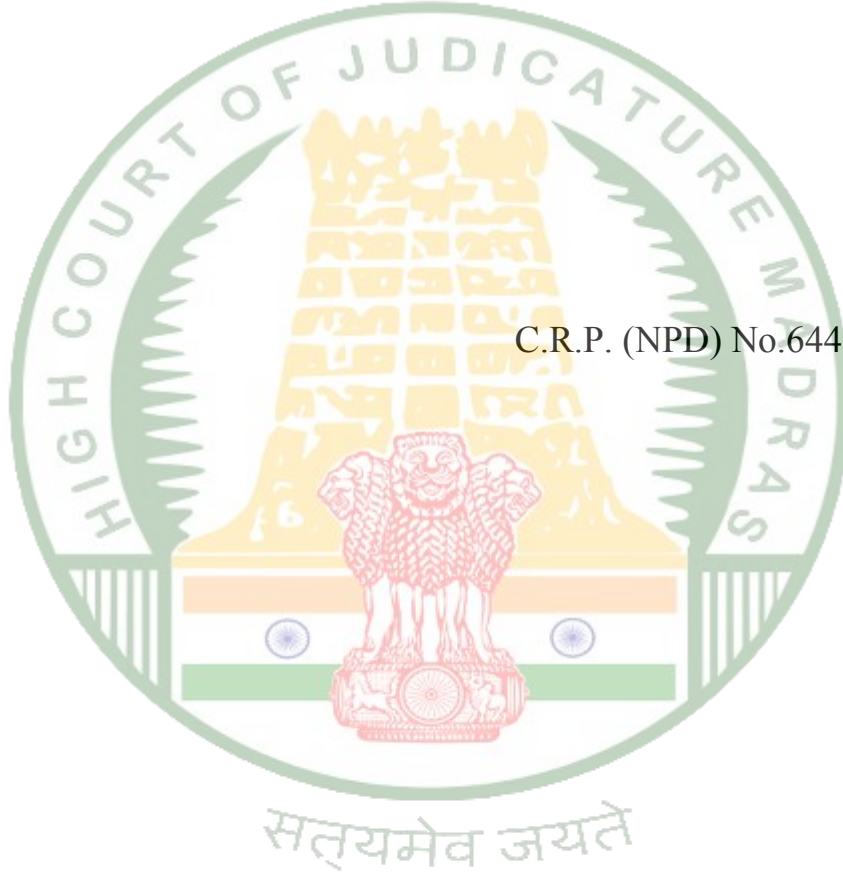
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To
The Principal Subordinate Court,
Kallakurichi



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C.V.KARTHIKEYAN,J.



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