

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3363 of 2017

and

C.M.P.No.15629 of 2017

K.Pavunesan

.. Petitioner

Vs.

P.Mohanasundaram

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.07.2017 made in I.A.No.26 of 2017 in O.S.No.525 of 2013 on the file of the II Additional Sub Court, Erode.

For Petitioner : Mr.C.Ramaraj
for Mr.M.Guruprasad

For Respondent : Mrs.P.Rajathi
for Mr.D.Gopal

ORDER

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

This Civil Revision Petition is filed against the fair and decretal order

dated 18.07.2017 made in I.A.No.26 of 2017 in O.S.No.525 of 2013 on the file of the II Additional Sub Court, Erode.

2.The petitioner is the defendant in O.S.No.525 of 2013 on the file of the II Additional Sub Court, Erode. The respondent filed the said suit for recovery of money based on promissory note dated 15.09.2011 against the petitioner. The petitioner filed written statement on 09.07.2014 and denied borrowal of money and execution of promissory note. According to petitioner, the respondent forged the signature and thumb impression of the petitioner and created the promissory note and filed the suit. The petitioner filed I.A.No.26 of 2017 under Order XXVI Rule 10 (A) R/W Section 151 of C.P.C. to send the suit promissory note along with admitted signature documents to the expert of The Deputy Director, Documents Division, Forensic Sciences Department, Mylapore, Chennai, to compare the signature in the suit promissory note and to send the suit promissory note along with petitioner's left thumb impression affixed before the Court to expert of The Superintendent of Police, Tamilnadu Finger Print Bureau, 95, Santhome High Road, SCRE Building, R.A.Puram, Chennai – 600 028, in order to get the expert opinion. The respondent filed counter affidavit and submitted that petitioner has not filed any document with admitted signature and signature

in the promissory note cannot be sent for comparison. The respondent further submitted that petitioner borrowed money from the respondent and executed promissory note. The petitioner has come out with the present petition belatedly and prayed for dismissal of I.A.

3.The learned Judge considering the averments in the affidavit, counter affidavit and the fact that petitioner filed the present I.A. after one year of filing the written statement and after examination of P.W.1 & P.W.2 / attesting witness, dismissed the I.A.

4.Against the said order of dismissal dated 18.07.2017 made in I.A.No.26 of 2017, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner submitted that the learned Judge failed to see that in the written statement filed by the petitioner, he has taken a specific plea that signature and thumb impression in the promissory note are forged and promissory note is created by the respondent. The learned Judge ought to have given opportunity to the petitioner to prove his case by allowing the application. The learned Judge erroneously

dismissed the I.A. on the ground of delay and application filed after examination of P.W.1 & P.W.2. The learned Judge failed to consider the fact that petitioner is disputing and denying the signature and thumb impression in the suit promissory note. The petitioner has pleaded forgery and hence, he has to be given opportunity to prove the same and prayed for allowing I.A.No.26 of 2017 as well as the Civil Revision Petition.

6.The learned counsel appearing for the respondent submitted that the petitioner borrowed money from the respondent and executed promissory note in favour of the respondent. The petitioner put his signature and thumb impression in the presence of witnesses and respondent examined attesting witness as P.W.2. The counsel for the petitioner cross examined P.W.2. After examination of P.W.1 & P.W.2, the petitioner has come out with the present I.A. only to drag on the proceedings. Further, the petitioner has not filed any admitted signature of the contemporary period of promissory note to verify the signature and therefore, he is not entitled to the relief sought for in the present I.A. and prayed for dismissal of Civil Revision Petition.

7.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused entire materials on

record.

8.From the materials available on record, it is seen that the respondent filed suit for recovery of money based on promissory note dated 15.09.2011 executed by the petitioner in favour of the respondent. The petitioner filed written statement and denied borrowal of money and also execution of promissory note. According to the petitioner, the respondent forged the signature and thumb impression of the petitioner in the suit promissory note. The petitioner on such stand, filed the present I.A. for comparison of signature in the promissory note with his admitted signature of documents enclosed. From the materials on record, it is seen that the petitioner has not filed any documents containing his admitted signature of contemporary period of suit promissory note. The petitioner has not filed any document of contemporary period of admitted signature and hence, the petitioner is not entitled to compare his signature in the promissory note.

9.At the same time, it is to be taken note of the fact that petitioner also sought for comparison of his thumb impression contained in suit promissory note with his left thumb impression to be taken in the open Court and the same to be sent for comparison to the Forensic Department. The learned

Judge has not properly considered the pleading of the petitioner seeking opinion of The Superintendent of Police, Tamilnadu Finger Print Bureau, 95, Santhome High Road, SCRE Building, R.A.Puram, Chennai – 600 028. The learned Judge has dismissed the I.A. on the ground that petitioner has filed I.A. after one year of filing the written statement and after examination of P.W.1 & P.W.2. The learned Judge has not given any reason for not accepting the plea of the petitioner to take his left thumb impression in the open Court and send the same along with promissory note for comparison of thumb impression in the promissory note. The learned Judge has not exercised his power properly and erroneously dismissed the I.A. on the ground of delay.

10.For the above reason, the order of the learned Judge is liable to be set aside only with regard to claim of the petitioner for comparison of left thumb impression to be taken in the open Court with the thumb impression found in the promissory note. I.A.No.26 of 2017 is remitted back to the learned II Additional Subordinate Judge, Erode, with a direction to take the left thumb impression of the petitioner in the open Court, appoint an Advocate Commissioner to send the left thumb impression of the petitioner taken in the open Court to The Superintendent of Police, Tamilnadu Finger Print Bureau, 95, Santhome High Road, SCRE Building, R.A.Puram,

Chennai – 600 028, for comparison with the disputed thumb impression in the promissory note.

11.With the above direction, this Civil Revision Petition is allowed in part. Consequently, the connected Miscellaneous Petition is closed. No costs.

24.09.2021

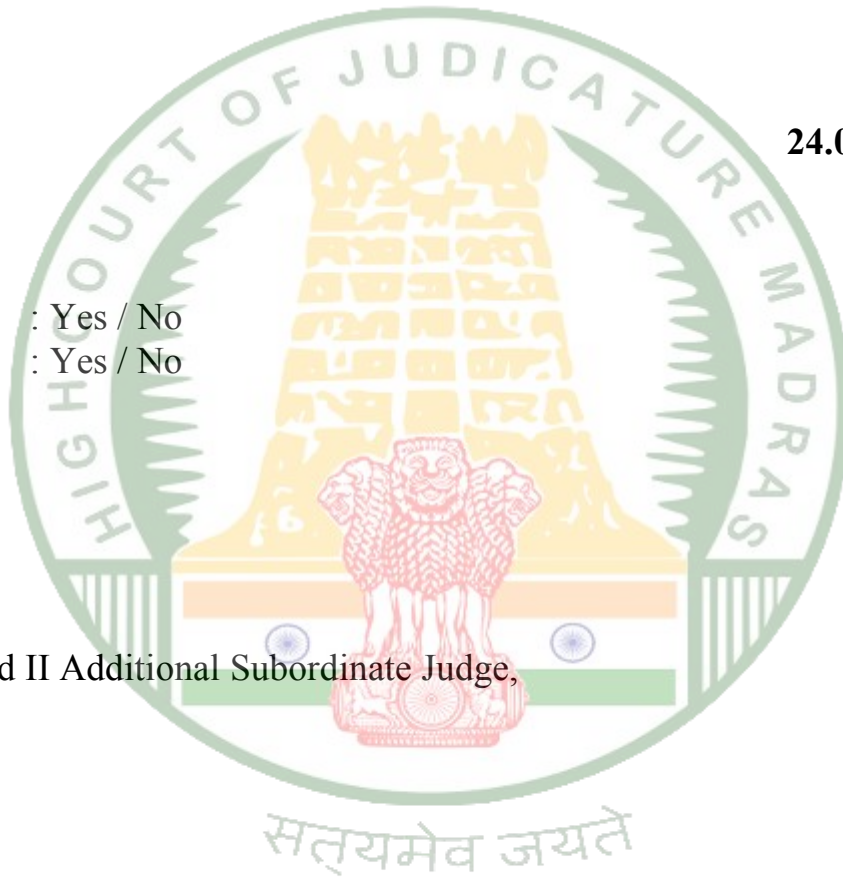
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Index : Yes / No

Internet : Yes / No

To

The learned II Additional Subordinate Judge,
Erode.



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V.M.VELUMANI, J.
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