



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD) No.756 of 2017
and
CMP No.3756 of 2017

K.Palanisamy
S/o.Karuppanna Gounder

..Petitioner/defendant/petitioner

Vs.

Eswaramurthy
S/o.Periyasamy Gounder

... Respondent/Plaintiff/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India seeking to set aside the Fair and Decreetal Order dated 19.01.2017 passed in I.A.No.128 of 2016 in O.S.No.212 of 2014 on the file of the Additional District Court No.3, Dharapuram.

For Petitioner : Ms.Raja Shama Gayathri
for Mr.K.Govi Ganesan

For Respondents : Mr.K.Dhannajayan
for Mr.Sivaji

O R D E R

(This case has been heard through video conference)

The revision has been filed seeking set aside the Fair and Decreetal Order dated 19.01.2017 passed in I.A.No.128 of 2016 in O.S.No.212 of 2014 on the file of the Additional District Court No.3, Dharapuram.

2. The brief facts of the case is that the respondent/plaintiff had filed a money suit to direct the petitioner/defendant to pay the plaintiff a sum of



Rs.16,63,800/- with interest at 18% per annum for the principal amount of Rs.12 lakhs from the date of suit to till the date of payment of realization of the entire amount. It is the case of respondent/plaintiff that the petitioner/ defendant had borrowed a sum of Rs.12 lakhs on 19.08.2012 for his urgent family and business expenses and had executed a promissory note agreeing to repay the said amount with interest at 18% per annum. It is the further case of the respondent / plaintiff that the petitioner / defendant had also handed over his original sale deed vide document No.2162 of 1995 dated 20.04.1995 for security purpose. The petitioner / defendant had filed a written statement denying that he had not borrowed the said sum of Rs.12 lakhs and there was no money transaction between them and that he had not executed any pro-note in favour of the respondent / plaintiff and that the alleged pro-note was a forged one created by the respondent / plaintiff to get unlawful gain. The respondent/ plaintiff was examined in chief and the pro-note was marked as Ex.A1. The examination of the respondent/plaintiff in chief was completed on 11.02.2016 and the petitioner / defendant had filed I.A.128 of 2016 under Section 73 read with Order 25 Rule 9 and 10 C.P.C. seeking to send the said pro-note for comparison of thumb impression through an Advocate Commissioner. The respondent/plaintiff had filed a counter stating that it was not the specific case of the petitioner /defendant that the signature in the pro-note was a forged one and only a vague averment in denial was made stating that the pro-note was forged and further it was contended that the petition was filed belatedly to drag on the proceedings. The trial Court holding that the averment was vague and that the petitioner/defendant had not specifically pleaded that the signature was forged and further finding that the petition had been filed belatedly, had dismissed the petition. Against which, the present revision has been filed.

3.Ms.Raja Shama Gayathri, representing the learned Counsel for the petitioner / defendant Mr.K.Govi Ganesan would submit that the petitioner/ defendant had taken a specific defence in the written statement stating that the promissory note was a forged one which means the signatures and the thumb impression on the pro-note were not his and the petitioner will be able to file the petition to send the documents for examination only after it is marked before the trial Court during the course of trial. The evidence of the respondent/defendant was taken on 11.02.2016 and the particular pro-note was marked as Ex.A1. Despite the petitioner denying the signature and the thumb impression in the pro-note, the respondent / plaintiff did not take any steps to send it for expert opinion and thereby, the petitioner/defendant was bound to prove that it was a forged one. She would further submit that since the petitioner did not



have any sample signatures during the relevant period of the pro-note, the petitioner disputing and denying the thumb impression found on the pro-note had filed the petition seeking for appointment of Advocate Commissioner to take the pro-note for getting expert opinion. The petitioner/defendant was also ready to give samples of his thumb impression whereas, the trial Court without properly analyzing the facts of the case and wrongly holding that no specific plea had been made by the petitioner/defendant that the signature was forged, had dismissed the petition. The learned Counsel would further submit that there was no delay on the part of the petitioner and only after the document was marked, the petition has been filed and if the petitioner had filed the petition before marking the document, it would have been rejected stating that the petition is prematurely filed since the document was marked not before the Court till then. She would submit that in the interest of justice, the document has to be sent for getting expert opinion with regard to the thumb impression found on the pro-note with that of the petitioner and thereby, she would seek to set aside the order.

4. The learned Counsel for the respondent / plaintiff would vehemently oppose stating that the petitioner / defendant had not made any specific plea that the signature was a forged one and a vague and general averment in denial was made in the written statement that the pro-note was forged and the trial Court rightly finding that no specific plea has been made and that the petition has been filed belatedly, had dismissed the application. Thereby, he would seek for dismissal of the petition.

5. Heard the learned counsels and perused the materials on record.

6. In this case money suit has been filed by the respondent / plaintiff placing reliance on Ex.A1, the pro-note. It is the case of the petitioner / defendant that he had not borrowed any money from the respondent / plaintiff and that he had not executed any pro-note in favour of the respondent / plaintiff and that Ex.A.1 pronote is a forged one. The respondent / plaintiff had during the course of examination in chief had marked the pro-note as Ex.A1. Only thereafter, the petition has been filed. seeking to send said pronote for comparison of thumb impression through an Advocate Commissioner.



7. This Court is of the opinion that there is no delay. Only after the document is marked, it can be sent for expert opinion. In this case, it is the specific plea of the petitioner / defendant is that he has not borrowed any amount and not executed any pronote and the pro-note is a forged one and further a specific plea has been made that the respondent / plaintiff has not taken any steps to prove his case by letting evidence. Thereby, the petitioner / defendant cannot be found fault with. Since the thumb impression found on the pro-note/Ex.A1 is sought to be compared with that of the thumb impression of the petitioner / defendant, necessarily it has to go before the expert for comparison and opinion. The trial Court erred in dismissing the petition.

8. In view of the above, the trial Judge is directed to appoint an Advocate Commissioner, thereafter he shall obtain thumb impression of the petitioner/defendant in the presence of the Advocate Commissioner and the counsel on either side. The thumb impression so obtained along with Ex.A1 shall be sent to the expert for comparison and obtaining expert opinion. The petitioner/ defendant shall bear the expenses of the Advocate Commissioner for getting the expert opinion. After the expert opinion obtained, the Court shall issue summons to the expert at the cost of the petitioner/defendant for appearing before the Court and adducing his evidence. The expert shall be examined as court witness and liberty shall be given to both sides to cross examine the expert, if they desire so. Thereafter, the Court shall apply its mind on the evidence available and decide the case in accordance with law.

9. With the above observation, the Civil Revision Petition stands allowed and the order dated 19.01.2017 passed in I.A.No.128 of 2016 in O.S.No.212 of 2014 on the file of the Additional District Court No.3, Dharapuram is set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ksa2



To

The Additional District Judge No.III,
Dharapuram.

WEB COPY

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.36729

+1cc to Mr.A.Sivaji, Advocate, S.R.No.37350

CRP(PD) No.756 of 2017

PA(CO)
RLP(06/09/2021)