

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(PD) No.4016 of 2018
and
Cmp.Nos.13730 & 22238 of 2018

Baskar

... Petitioner

Versus

Mangayarkarasi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitutional Law of India, to set aside the fair and decretal order dated 12.09.2018 made in I.A.No.464 of 2018 in O.S.No.371 of 2017 on the file of the Sub-Court, Jayankondam.

For Petitioner : Mr.M.Senthilvadivu

For Respondent : Mr.P.Valliappan

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ORDER

This Civil Revision Petition has been filed challenging the order dated 12.09.2018 made in I.A.No.464 of 2018 in O.S.No.371 of 2017 on the file of the Sub-Court, Jayankondam.

2.The above said I.A.No.464 of 2018 in O.S.No.371 of 2017 was filed under Order XXVI Rule 10A and Section 45 of the Indian Evidence Act, for referring the signature in the promissory note to be compared based on the documents filed by the revision petitioner, for expert opinion.

3.After considering the arguments on both sides and on perusal of the documents, the Court below dismissed the application by stating that the written statement was filed on 03.10.2017 and the matter was posted for the cross-examination on the plaintiff side. At this stage, the defendant/petitioner filed the I.A.No.464 of 2018 for comparing the signature for expert opinion and it is only an attempt to drag the proceedings. The signature in the promissory note was executed by the defendant/revision petitioner in favour of the plaintiff/respondent herein on 05.04.2014. However, the contemplated signatures were submitted for comparison with the xerox copies of documents in the Passport dated 09.09.2009 and another Promissory note dated 07.10.2009 to compare it with the promissory note executed on 05.04.2014. But, these two documents were produced by the revision petitioner only in the form of photo copies and it was executed five years prior to the execution of the promissory note dated 05.04.2014. Therefore, the said application filed by

the revision petitioner was rejected as the same is not maintainable since no original documents were produced for the purpose of comparison of the signature in the promissory note dated 05.04.2014. Challenging the said order dated 12.09.2018 passed in I.A.No.464 of 2018 in O.S.No.371 of 2017, by the Court below, the present Civil Revision petition is filed.

4.The learned counsel for the petitioner submitted that the contemplated signatures are not available with the petitioner. However, it is available only with bank, since she operating an account in a bank however some documents were provided for guarantee before the bank for obtaining loan. Therefore, he wanted the same to be submitted before the Court below. If the same is produced, he can be able to prove the signature in the promissory note. The said signature in the promissory note is not made by the petitioner. Therefore, a direction should be issued to the bank by invoking the power of this Court to substantiate her case.

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5.On the other hand, the learned counsel for the respondent submitted that there is no power to Court when the documents produced were photo copies that too which were executed five years prior to the promissory note. Those documents cannot be sent for comparison of

signatures in the promissory note and it is for the revision petitioner to produce original documents containing the signature to prove his defence. It is settled position of law that signatures made one or two years alone can be sent for comparison with the disputed signatures. Therefore, he prayed for dismissal of the revision petition.

6.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

7.After perusing the records, the Court below has dismissed the application for the reason that the petitioner had produced two documents, which were prior to the disputed signature in the promissory note. Further, he has not produce any of the documents of the original signature. Therefore, the Court below has come to the conclusion that it is not in a position to sent the disputed documents for the purpose of comparison to the expert opinion. The order of Court below is well reasoned order which does not warrant any interference by this Court. So, I do not find any infirmity in the order dated 12.09.2018 passed in I.A.No.464 of 2018 by the Sub-Court, Jayankondam, on this aspect.

8.However, the learned counsel for the petitioner submitted that if some other signatures are available, she may be permitted to produce the same for the purpose of comparison. This Court cannot ask any document from the third party for comparison of the signature. It is only for the the concern Court to call for the records and it is up to the Court below to decide the same on merits.

9.The learned counsel for the respondent submitted that the matter is pending for a long time and the matter was already posted for the cross-examination on the plaintiff side, therefore, he pleaded for earlier disposal of the suit. Since the learned counsel for the petitioner submitted that if they have any document containing original signatures to be compared with the disputed signature in the promissory note and the same is available with the bank, since, she has signed the deed of guarantee executed for the loan every year and as the same is continuing every year, even today, it is for the petitioner to take appropriate steps, if so advised to bring those documents before the appropriate Court and in such case, the Court below may decide the same on merits. Taking into consideration that the suit is pending for a long time, this Court directs the Court below to

dispose of the suit within a period of six months from the date of receipt of a copy of this order.

10.With the above observations, the Civil Revision Petition is dismissed. No cost. Consequently, the connected miscellaneous petition is closed.

08.02.2021

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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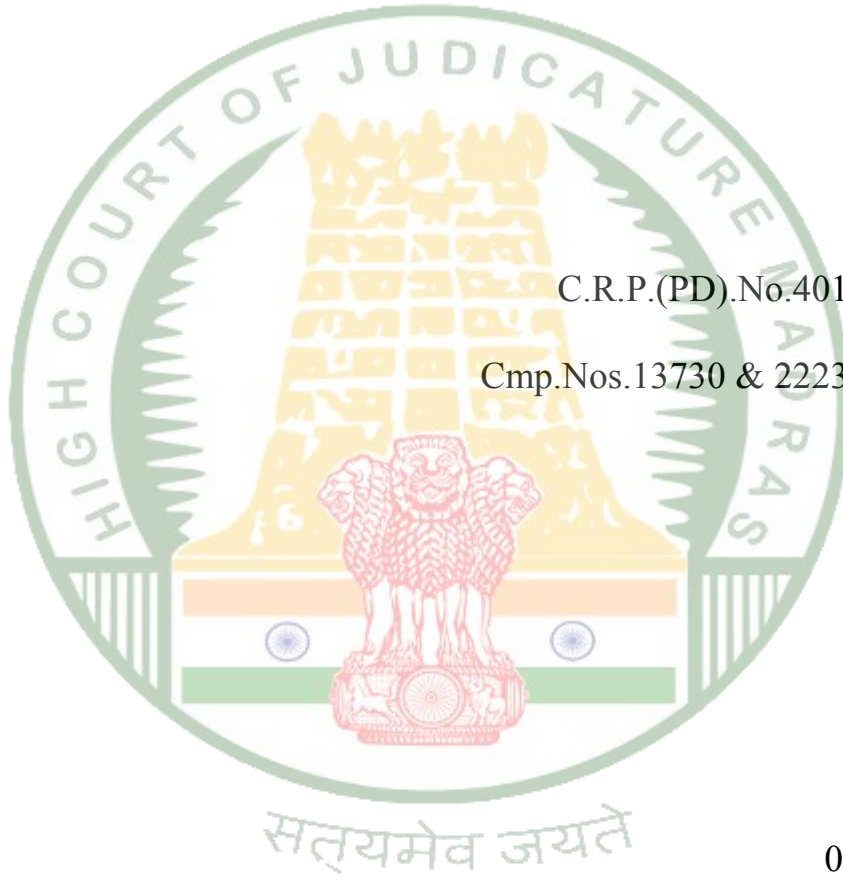
To:

The Sub-Court, Jayankondam.

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KRISHNAN RAMASAMY., J.

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