

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.4170 of 2018

and

CMP.Nos.22996 of 2018 & 22556 of 2019

Naresh Narang

..Petitioner

Vs.

M/s.Nisha Constructions,
represented by its Proprietrix,
Rajeswari Mule,
No.167/1, Peters Road, Royapettah,
Chennai – 600 014

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order dated 25.09.2018 passed in IA.No.7490 of 2018 in OS.No.682 of 2017 on the file of the VI Additional City Civil Court, Chennai.

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For Petitioner

: Mr.M.P.Muthukumaran

For Respondent

: Mr.R.Murugan,
for M/s.Rugan & Arya

ORDER

This Civil Revision Petition is filed against the order and decretal order dated 25.09.2018 passed in IA.No.7490 of 2018 in OS.No.682 of 2017 on the file of the VI Additional City Civil Court, Chennai, thereby dismissing the petition sought for handwriting expert opinion.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit for recovery of money. The case of the respondent is that he entered into one construction agreement with the petitioner herein to construct a house at plot No.109, Paneer Nagar, Part-II, Mogappair East, Chennai-37. As per the construction agreement, approximate area is 2782 sq.ft. at the rate of Rs.460/- per sq.ft. The total construction cost was agreed to be at Rs.12,79,720/-. After completion of construction in accordance with the terms of the constructions agreement, the respondent also carried extra work as required by the defendant. Due to various alterations and changes carried out as specified by the petitioner, the cost escalated to the tune of Rs.18,49,790/-. Therefore, the respondent raised bill dated 21.05.2003 to the petitioner herein for a sum of Rs.18,49,790/- Whereas the petitioner so far paid a sum of Rs.9,13,749/- and for the remaining amount as per the bill raised by

the respondent, the respondent filed suit for a sum of Rs.14,41,503/- with interest at the rate of 18% per annum before this Court. On receipt of summon, the petitioner failed to appear before the court and as such he was set exparte. Thereafter, exparte decree was passed.

3. On the strength of the exparte decree, the respondent filed execution petition before the Principal District Court, Tiruvallur in EP.No.64 of 2012. Even in the execution proceedings, the petitioner was served notice and failed to appear. At that juncture, the petitioner filed petition to set aside the exparte order in the execution petition and also the same was allowed on condition that the petitioner shall deposit Rs.12,00,000/- to the credit of the suit. Subsequently, the suit in CS.No.443 of 2006 was transferred to the file of the VI Additional City Civil Court, Chennai and renumbered as OS.No.682 of 2017. Immediately, the petitioner filed written statement and specifically denied the very agreement for construction dated 09.11.2004.

4. According to the petitioner, the construction agreement filed along with the plaint is not the one entered into between the parties. The agreement filed is doctored and forged one. In the said

agreement, other than the last page, there is no signature in other pages and even signature in the last page has been forged by the respondent herein. Therefore, the petitioner filed petition to send for the construction agreement which was marked as Ex.A2 to compare with the other admitted signatures in Ex.A4 and Ex.A6 by the handwriting expert. However, the petition was dismissed for the reason that the issue in the suit has to be decided as to whether the respondent constructed the construction work of the petitioner's residence as per the terms of the conditions contained in Ex.A2, or the respondent left the construction work in halfway as alleged by the petitioner in his reply notice. Therefore, there is absolutely no necessity to compare the signatures found in the EX.A2 and Ex.A4.

5. On perusal of Ex.A2, except last page, in other pages no signature of the petitioner was found. In page No.8 of the said agreement, the signature of the party of the first part found and the letter issued by the petitioner dated 19.01.2005, in which the signature of the petitioner found and both the signatures are completely different one. Since the petitioner made specific averment in the written statement as to the effect that the signature found in Ex.A2 was forged by the respondent and also the entire suit for recovery of money lies on the construction agreement, it has to be

sent for to get handwriting expert opinion.

6. Therefore, the order dated 25.09.2018 passed in IA.No.7490 of 2018 in OS.No.682 of 2017 on the file of the VI Additional City Civil Court, Chennai is set aside and this civil revision petition is allowed. The court below is directed to send for construction agreement with the admitted signatures to get handwriting expert opinion within a period of two weeks from the date of receipt of copy of this order. On receipt of the expert opinion, the trial court is directed to dispose of the suit within a period of six months thereafter. Consequently, connected miscellaneous petitions are closed. No order as to costs.

30.07.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

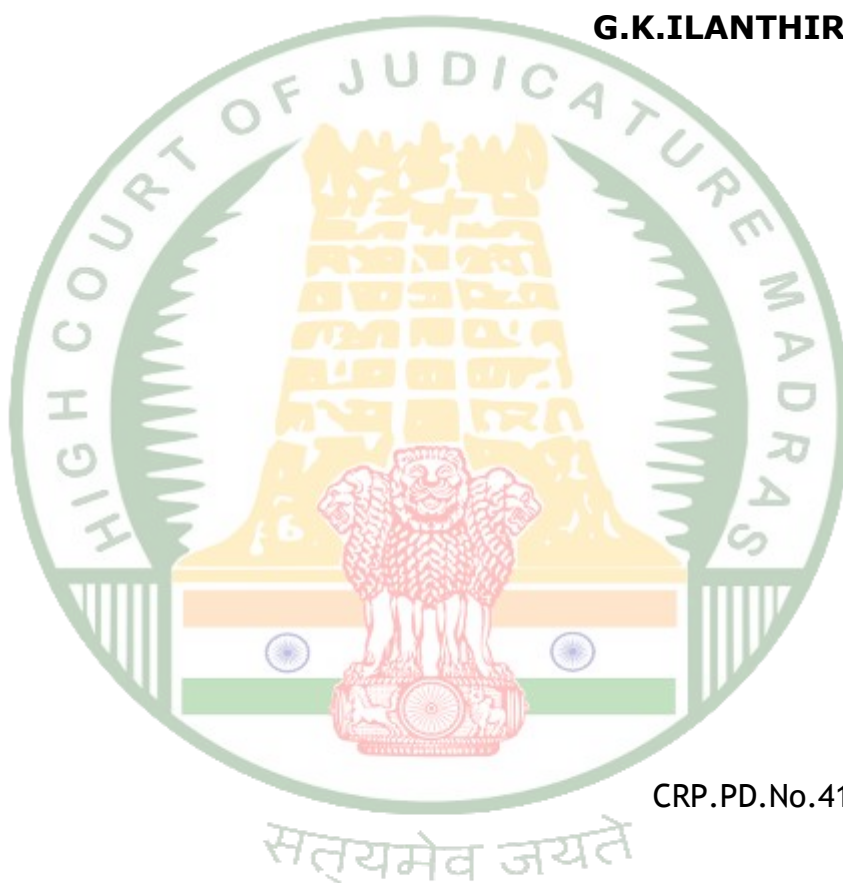
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To

The VI Additional Judge,
City Civil Court, Chennai

G.K.ILANTHIRAIYAN,J.

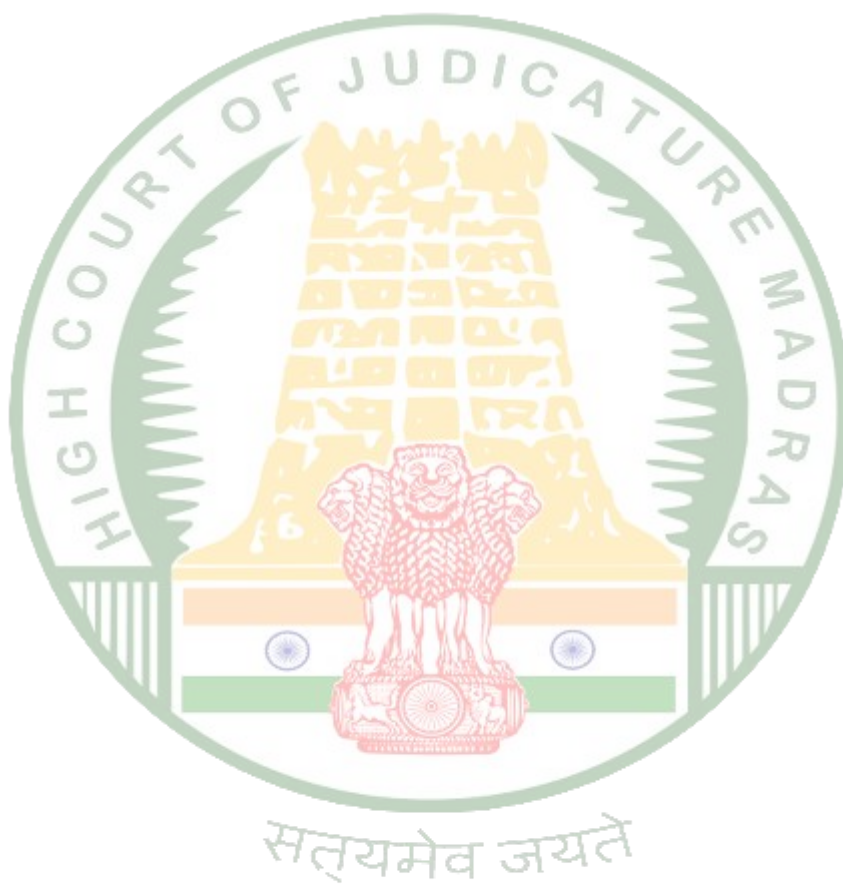
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