



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.07.2021

Pronounced on : 07.10.2021

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CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD) .No.601 of 2021

and

C.M.P(MD)No.3344 of 2021

Kanagaraaj : Petitioner/Respondent/Plaintiff
Vs.
Ramamoorthy : Respondent/Petitioner/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and executable order dated 05.01.2021, passed in the application in I.A.No.100 of 2020 in O.S.No.5 of 2019, on the file of the Additional District Court (Fast Track Court), Palani.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.D.Venkatesh

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.100/2020, in O.S.No. 5 of 2019, dated 05.01.2021, on the file of the Additional District Judge (Fast Track Court) Palani, in allowing the petition filed under Section 73 of Indian Evidence Act and under Order 26 Rules 9 and 10 of the Code of Civil Procedure.

2.The revision petitioner is the plaintiff and he filed the suit in O.S.No.5 of 2019, for recovery of money due on a promissory note. The respondent/defendant has filed the written statement and is contesting the suit.

3.The case of the plaintiff is that the defendant borrowed a sum of Rs.30,00,000/- on 04.10.2016, for his family expenses and for constructing building from the plaintiff and executed a promissory note agreeing to repay the principal amount with interest at 12% per annum either to the plaintiff or to his order on demand, that despite the repeated requests, the defendant has failed to pay any amount towards principal or interest and that therefore, the



plaintiff was constrained to file the above suit for recovery of Rs.38,10,000/- with interest at 12% per annum from the date of suit till payment and for costs.

4.The defence of the defendant is that the defendant has neither borrowed any amount nor executed any promissory note in favour of the plaintiff, that the plaintiff with the help of his close friends had created the promissory note and filed the suit, that the defendant's signature has been forged and the thumb impression found in the promissory note is not that of the defendant, that the plaintiff has no capacity to advance the loan amount of Rs.30,00,000/-, that the plaintiff's brother's wife Kanna, who is running a Textile Shop in the building owned by the defendant has filed a suit against the defendant for permanent injunction and that the said Kanna had setup the plaintiff to file the above suit with evil intention and to cause hardship to the defendant.

5.Pending suit, the plaintiff has filed a petition in I.A.No.125 of 2019 under Order 26 Rule 9 C.P.C read with Section 45 of the Evidence Act for appointment of Advocate Commissioner to take the promissory note, dated 04.10.2016 to the hand writing expert, for comparing the disputed signature of the defendant on the promissory note with admitted signatures of the defendant and for getting expert opinion. The defendant has filed a counter statement, stating that he did not execute any promissory note, that the plaintiff has filled up the printed form of promissory note given by the defendant long ago to his land-lord and that the promissory note should be sent to expert, to findout the age of the ink.

6.At the enquiry, the learned Counsel for the plaintiff has made an endorsement that since the defendant has admitted the signature found in the suit promissory note, the said petition may be dismissed as withdrawn. The learned Additional District Judge, by recording the endorsement made by the learned Counsel for the plaintiff, has dismissed the said petition as withdrawn, vide order dated 11.02.2020.

7.It is evident from the records that the above suit was originally filed before the Principal District Court, Dindigul, that the plaintiff along with the plaint has filed a petition in I.A.No.10 of 2019, under Order 38 Rule 5 of C.P.C, for attachment of the petition mentioned properties therein before judgment and that the Principal District Court, after enquiry, has passed an order dated 02.04.2019, dismissing the said petition. Aggrieved by the said dismissal order, the plaintiff has preferred an appeal in C.M.A (MD)No.632 of 2019, before this Court and this Court, after recording the undertaking given by the learned Counsel for the defendant, that the defendant will not alienate the petition mentioned properties, disposed of the appeal, vide order dated



28.08.2019. In the said order, this Court has directed the Principal District Court, Dindigul, to dispose of the suit within a period of one year from the date of receipt of copy of that order.

8.It is further evident that subsequently, after the constitution of the Additional District Court at Palani, the above suit was transferred and the same is now pending before the Additional District Court, Palani.

9.The defendant has, thereafter filed the above petition in I.A.No.100 of 2020, under Section 73 of Indian Evidence Act and Order 26 Rules 9 and 10 of C.P.C, for appointment of the Advocate Commissioner to take the suit promissory note to the Forensic Science Department, Madurai, to find out age of the writings, such as the names of the plaintiff and defendant, amount, interest and the signature found therein and to get an expert report.

10.The case of the defendant is that the plaintiff has managed to get an unfilled promissory note signed by the defendant and filled up the contents within one year before the suit, that the signature found in the promissory note was subscribed long back, that the defendant has not subscribed his signature in the promissory note on 04.10.2016 and that therefore it has become just and necessary to send the promissory note to Forensic Science Department to find out the age of the ink, used for writing the contents and the signature.

11.The learned Additional District Judge, after enquiry, has passed the impugned order dated 05.01.2021, allowing the said petition. Aggrieved by the said order, the plaintiff has come forward with the present revision.

12.The main contention of the revision petitioner/plaintiff is that this Court had been repeatedly held that age of the ink in the disputed document and the probable time at which age the writing had been made or signature had been afixed, cannot be verified by any forensic expert or hand writing expert and that there is no such facility available in the entire India to find out the age of hand writing or signature found in a document.

13.The learned Counsel for the plaintiff has relied on, as many as seven decisions and it is necessary to refer to the last two decisions, wherein, the earlier decisions were referred;

(1)**2014-2-LW 579:**

M/s. Dhana Lakshmi Mills Limited Vs. R.Krishnamurthy and Others:

"28. In Gopal, Sv.D.Balachandran, reported in 2008 CTC (1) 491, this Court (M.Jeyapaul, J) has held that age of ink cannot be determined by expert with scientific accuracy and it was found by this Court in the decision, that filing such a petition to find out



the age of the ink would create only further confusion. Hence, no expert opinion would be required to find out the age of the ink.

29. In *Yash Pal V. Kartar Singh*, reported in AIR 2003 Punjab and Haryana 344, the Punjab and Haryana High Court has also taken a similar view that the age of the ink cannot be determined on the basis of writing. If the ink is manufactured five years before the date of the execution of the document and use of the same effectively on a particular date for the first time would not resolve any controversy, but it would create only confusion.

34. When there is no scope for scientific investigation, Commissioner cannot be appointed, under Order 26 Rule 10A CPC. On the facts and circumstances of the case on hand, it is clear that the age of the ink could not be decided by any expert, as the same ink was used by the scribe, who wrote the minutes of the meeting. It is also relevant that five other Directors, who have admittedly signed have not raised any plea of subsequent interpolation or forgery, hence, the application filed under Order 26 Rule 10A CPC is not legally sustainable. Except causing delay in the disposal of the suit, allowing the petition would not serve any other purpose and there is no scope for scientific investigation."

(2) (2015)-1-LW (Crl.) 338:

A. Inayathullah Vs. A. Ramesh:

"5) Paragraph Nos. 7 to 9 of the Judgment in *R. Jagadeesan Vs. N. Ayyasamy*, reported in 2010 (1) MWN (Cr.) DCC 97: 2010 (1) CTC 424, considered in *panneerselvam's* case, are extracted.

'4. At the outset, the petitioner admits his signature in the cheque in question and he only contends that the ink by which the dates and amount filled therein differs. In other words, the petitioner seeks to ascertain the age of the ink by which the dates and amounts were filled in the cheque which cannot be done in view of the decision of this Court reported in (*R. Jagadeesan Vs. N. Ayyasamy*) (2010 (1) CTC 424). In that decision, this Court held that there is no such facility available in India, especially in Tamil Nadu to compare the age of the ink. In Para Nos. 7, 8 and 9 it was held as follows:-

7. In order to ascertain the correctness of the said statement, this



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Court had requested the learned Additional Public Prosecutor Mr. N.R. Elango to request either the Director or the Assistant Director, Document Division, Forensic Science Department, Chennai, to be present before this Court to explain the position. Accordingly, today, Mr. A.R. Mohan, Assistant Director, Document Division, Forensic Science Department, Government of Tamil Nadu, Chennai is kind enough to be present before this Court. According to him, he is the Head of the Document Division of the department. On a query made by this Court regarding the above position, he would explain to this Court that there is no scientific method available anywhere in this State, more particularly, in the Forensic Science Department, to scientifically assess the age of any writing and to offer opinion. However, he would submit that there is one institution known as Nutron Activation Analysis, BABC, Mumbai where there is facility to find out the approximate range of the time, during which the writings would have been made. It is a Central Government Organisation. According to him, even such opinion cannot be exact. He would further submit that since it is a Central Government Organisation and confined only to atomic research, the documents relating to prosecutions and other litigations cannot be sent to that institution also for the purpose of opinion. He would further submit that if a document is sent for comparison, with the available scientific knowledge, opinion to the extent as to whether the same could have been made an individual, by comparing his admitted handwritings or signatures, alone could be made. He would further submit that if there are writings with two different inks, in the same document, that can alone be found out. But he would be sure enough to say that the age of the writings cannot be found out at all to offer any opinion.

8. In view of the above clear and unambiguous statement made by no less a person than the Head of the Department of Forensic Science, I am of the view that the



7) Though after ascertaining as to whether, there is any expert available in this country, and in particular, Central Forensic Sciences Laboratory, Hyderabad and the Director of Forensic Sciences, Chennai, this Court has held that reference cannot be made to any expert for ascertaining the age of the ink used on the disputed document/cheque, the present petition has been filed challenging the order rejecting the abovesaid prayer.

10) Cheque is stated to have been issued on 18.02.2013. As rightly observed by the Court below, petition under Section 45 of the Indian Evidence Act r/w Section 139 of the Negotiable Instruments Act, has been filed after the examination of the accused. There is no competent authority to ascertain the age of the ink and the said facility is stated to be not available in the Forensic Departments in India. There is no illegality in the finding recorded by the Court below, warranting interference."

14.Considering the above, it is very much clear that as of now, there is no mechanism or scientific method to findout the age of the writing or ink. But the learned Additional District Judge, without considering the non-availability of any such mechanism, by simply observing that the defendant has to be given an opportunity to prove his defence and no prejudice would be caused to the plaintiff, allowed the petition. Hence, this Court has no hesitation to hold that the impugned order is not good in law and the same is liable to be set aside.

15.The learned Counsel for the plaintiff would submit that though this Court, in the earlier revision, has directed the Trial Court to dispose of the suit within a period of one year, in the present Revision, this Court has granted stay of further proceedings and that therefore necessary direction may be issued for the early disposal of the suit.

16.Considering the facts and circumstances of the case and also the fact that this Court has already fixed the time limit for disposal of the suit and the same was not complied with, as the proceedings were subsequently stayed by this Court in the present revision, this Court is of the view that necessary directions are to be issued for the early disposal of the suit.

17.In the result, the Civil Revision Petition is allowed and the impugned order passed in I.A.No.100 of 2020, dated 05.01.2021 on the file of the Additional District Court Palani, is set aside. The Trial Court is directed to dispose of the suit within three months



from the date of receipt of copy of this order. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Additional District Court (Fast Track Court),
Palani.
2. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

- 1.The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-31702[F] dated 08/10/2021)

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MGJ/JC (11.11.2021) 8P 6C