



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1737 of 2021

Mariappan

... Petitioner

vs.

Sivanesan

... Respondent

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to call for records and set aside the fair and executable order dated 27.09.2019 passed in the application in I.A.No.2 of 2019 in O.S.No.163 of 2014 on the file of the Additional Subordinate Court, Tenkasi.

For Petitioner : Mr.J.Barathan
For Respondent : Mr.C.S.Ravichandran

ORDER

The defendant seeks to challenge the dismissal of his application in I.A.No.2 of 2019 in O.S.No.163 of 2014, which was an application filed by him to summon the Manager of the Shenkottai Depot of the Tamil Nadu State Transport Corporation and the Branch Manager of the State Bank of Travancore to mark certain documents, which has been listed out in the impugned petition.

2.The document numbers a, b and c relates to the documents that was sought to be produced through the Manager of the Shenkottai Depot and the other documents, namely, CCTV footages were sought to be marked through the Branch Manager of the State Bank of Travancore.

3.The petitioner herein, who is the defendant in the suit in O.S.No.163 of 2014 has countered the claim made by the respondent/plaintiff for recovery of a sum of Rs.9,37,067/- due under a promissory note dated 11.10.2011 by stating that he had only borrowed a sum of Rs.50,000/-, for which, a blank printed promissory note was signed and handed over by him to the respondent along with the ATM card. It is also his case that he has repaid the entire amount, since the respondent has used the ATM card of the petitioner to withdraw over a sum of Rs.4,37,806/-, which is much more than the amounts due to the respondent/plaintiff.



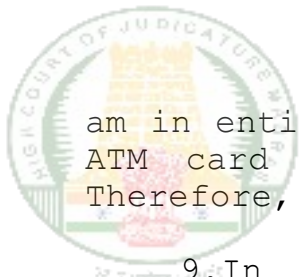
4.The plaintiff in his plaint had contended that the hand loan for a sum of Rs.7,00,000/- was handed over by him to the defendant on 11.10.2011 to meet his urgent family requirements and for constructing his house. During his cross-examination, the plaintiff as P.W1 had stated that this loan was handed over at 11.30 pm., at the Shenkottai Depot. The petitioner/defendant had therefore taken out this application to summon the records relating to the entry register and the allotment of work register and also the register maintained by the Security at the Depot in order to disprove the case of the plaintiff. That apart, he had sought to have the CCTV footage of the Bank summoned to show the number of times the defendant had gone to the ATM to withdraw money utilizing the ATM card taken from the petitioner/defendant.

5.The respondent/plaintiff had contested the above application *inter alia* contending that the entire allegation that he had utilized the ATM card is totally false. That apart, the respondent has also an account in the very same Branch and that the documents now sought for do not in any manner relate to the issue and dispute.

6.The learned Additional Subordinate Judge, Tenkasi, by the order dated 27.09.2019, rejected the application. The ground on which it has been rejected is that the application is a delayed application and that apart, the petitioner has himself admitted that he has handed over the ATM card to the plaintiff/respondent and therefore, he cannot now seek to have the CCTV footage for the period of 2011-2014 produced by the Bank. Challenging the same, the defendant/petitioner is before this Court.

7.Heard the learned counsels and perused the records.

8.The respondent/plaintiff in the course of his cross-examination has elaborated that the loan was given at 11.30 pm., in the precincts of the Shenkottai Depot. It is the contention of the petitioner/defendant that he was not on duty at that relevant point of time. In order to substantiate the above, he has taken out this application. In the plaint, the respondent has not chosen to make any mention about the time at which, the money had been handed over. It is only during his cross-examination that he has elaborated upon this. The defendant has to be given a chance to prove his defense. Since it is the case of the plaintiff/defendant that the money was handed over in the precincts of the Shenkottai Depot and at a particular time, the petitioner is well within his right to seek to have the documents listed in the petition produced by the Manager of the said Depot. The learned Judge has erred in rejecting the application insofar these documents are concerned, without addressing the contents stated in the affidavit filed in support of this petition. However, with reference to the finding of the learned Judge insofar as it relates to the production of the CCTV footage, I



am in entire agreement with the finding rendered therein, since the ATM card has been given to the respondent by the petitioner. Therefore, production of CCTV footage is not required.

9. In the result, this Civil Revision Petition is partly allowed. The order of the learned Additional Subordinate Judge, Tenkasi insofar as it relates to the production of the document described as a, b and c in I.A.No.2 of 2019 through the Manager of the Shenkottai Depot and the Branch Manager of the State Bank of Travancore is set aside. In all other aspects the order of the learned Additional Subordinate Judge, Tenkasi passed in I.A.No.2 of 2019 in O.S.No.163 of 2014 is hereby confirmed. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Additional Subordinate Judge,
Tenkasi.

C.R.P. (MD) No.1737 of 2021
16.11.2021

sj (CO)

TR(30.11.2021) 3P 2C