



C.R.P.(PD) No.160 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM : JUSTICE **N.SESHASAYEE**

C.R.P.(PD) No.160 of 2021
& CMP No.1500 of 2021

Thiruppathi

... Petitioner

Vs.

Sumathi

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, as against the fair and final order passed in I.A.No.3 of 2020 in O.S.No.65 of 2014 dated 20.03.2020 on the file of the learned Subordinate Judge, Sankari.

For Petitioner : Mr.J.Prithivi

ORDER

This petition is filed as against the fair and final order passed in I.A.No.3 of 2020 in O.S.No.65 of 2014 dated 20.03.2020 on the file of the learned Subordinate Judge, Sankari.



C.R.P.(PD) No.160 of 2021

2.The defendant in a suit for recovery of money instituted by the respondent in O.S.No.65 of 2014, has come before this Court challenging the order rejecting the defendant's prayer for producing one document, vide order in I.A.No.3 of 2020 dated 20.03.2020.

3.As outlined earlier, a suit on promissory note was laid against the defendant and the defence taken by the revision petitioner is that there was an unregistered chit conducted by the plaintiff's husband, in which he was a subscriber, that he bid in a chit-auction, and at that time when he received the prize money, he executed certain written promissory note and also handed over few signed blank papers to the plaintiff's husband, and they are now being manipulated to create a cause for a present action.

4.The learned counsel for the revision petitioner argued that there are two witnesses to the promissory note in question and they were examined before the trial Court as attestors and scribe of the promissory note, and that both have been examined before the trial Court as P.W.2 and 3, and they, in the course of their cross examination, have fixed the time of execution of the promissory note by the revision petitioner/ defendant in the suit. The defendant wants to produce a copy of the attendance register of thee



C.R.P.(PD) No.160 of 2021

witnesses, but the prayer to produce the same in evidence came to be refused by the impugned order on the ground that its relevancy was not established. The learned counsel further argued that it is not so much about the burden of proof but the onus of proof. This is because, the plaintiff has examined PW2 and 3 and since, these two witnesses fixed the time of execution of the promissory note, it has become obligatory for the defendant to rebut the evidentiary effect of their testimony for which, the defendant requires the attendance register to be marked.

5. Notice to the respondent/plaintiff as well as the counsel for the respondent before the trial Court were served but they did not turn up before this Court.

6. This Court finds merit in the submissions of the learned counsel for the revision petitioner. The learned trial Judge was worried about the relevancy of the attendance register sought to be marked but its relevancy has been adequately explained by the learned counsel for the revision petitioner in his submissions. This Court is in agreement with the same. The only point that may be proper for the trial Court to probe is about the genuineness of the attendance register. Therefore, subject to the satisfaction of this Court over the genuineness of the attendance register now sought to be marked in



C.R.P.(PD) No.160 of 2021

evidence on the side of the defendant, the document may be permitted to be marked. Accordingly, the said document is directed to be received in evidence even if there are any objections raised by the plaintiff, then such of those objections are required to be resolved and must be decided during the final hearing of the suit.

7. This revision petition is allowed in the manner as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

22.03.2022

dn

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

N.SESHASAYEE.J.,

dn



WEB COPY



C.R.P.(PD) No.160 of 2021

C.R.P.(PD) No.160 of 2021

22.03.2022