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C.R.P(PD)No.768 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

C.R.P(PD)No.768 of 2022
& C.M.P.No.3865 of 2022

O.R.Deepa
Partner,
M/s.Polyfine Industries
No.21/3 Koodapakkam Main Road
Villianur,
Puducherry-605110.

... Petitioner

Vs.

1.P.Gopal
S/o.Pavadaisamy,

2.M/s.Polyfine Industries,
Rep .By its Partners
No.21/3 Koodapakkam Main Road
Villianur,
Puducherry-650110.

3.R.Sathiya
W/o.Ravikumar
Partner and Authorized Signatory of Polyfine Industries
No.58 Dhanakodi Nagar Extension
Dharmapuri, Puducherry

4.V.Ekambari
Partner and Authorized Signatory of Polyfine Industries
No.2712/ Iyyankottai Street,
Pattiveerenpatti, Nilakottai Taluk,
Dindigul- 624211.

... Respondents



PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and Decreetal order dated 25.10.2021 passed in I.A.No.309/2021 in O.S.No.67 of 2014 on the file of the III Additional District Judge Puducherry.

For Petitioner : Mr.Manoj Sreevalsan
For Respondents : Mr.S.Ravee Kumar for R1

ORDER

The second defendant in O.S.No.67 of 2014 has come forward with the revision challenging an order passed in I.A.No.309 of 2021 which came to be dismissed vide order dated 25.10.2021. This application was filed by the Revision petitioner to send for Ex.P.1 viz. a cheque which is available on the records in STR No.374 of 2016 on the file of the learned III Additional District Judge, Puducherry,.

2.The back drop of this case may be stated briefly:

The respondent/plaintiff in the suit has laid a suit for recovery of money, which he alleges that he had lent to a partnership firm. The revision petitioner/2nd defendant is one of the partners of the firm. According to the plaintiff, the defendants 3 and 4 who are the other partners of the defendant's firm, respondents 2 and 3 herein, have drawn a cheque towards discharge of



loan liability of the firm. Since, this Cheque came to be dishonoured on presentation, the respondents have laid STR No.374 of 2016 referred to above. He also laid the present suit for recovery of property.

3.The trial of the suit has commenced and the 1st respondent / plaintiff has introduced a certified copy of the cheque of the above referred cheque viz. Ex.A1, and this Court is informed that he has been cross examined on that. At this stage, the revision petitioner/2nd defendant has taken out the present application to send for the said cheque which has since been marked as Ex.P.1 in STR.No.374 of 2016.

4.The learned counsel for the revision petitioner submitted that there are certain material alteration in the said cheque with regard to which he needs to pose question and it is for this purpose, he needs the original cheque before the trial Court.

5.The learned counsel for the 1st respondent was vehement in opposing it on the ground that the defendants 3 and 4 who have drawn the cheque have not disputed either drawing the cheque or its issuance to the plaintiff, but have



taken up plea that this cheque was issued as a security and not for discharging any loan liability. Secondly, all the defendants, including the revision petitioner contend that they indeed have discharged the loan liability. So far as the present application is concerned, the 1st respondent/plaintiff contention is that nowhere in the written statement have they taken up plea that there are material alteration in the cheque.

6.The rival contentions carefully weighed. When once the plaintiff has introduced a certified copy of the cheque, it throws open opportunity to the defendants to cross examine the plaintiff on the same. In so doing, the defendants may not be restrained, and they must have their full opportunity. So far as the specific allegation of the plaintiff that there is no allegation of material alteration in the cheque in question in the written statement is concerned, this Court does not want to make any opinion on the same and the issue is left open. It needs to be underscored that when the very cheque is not produced in this case, it can be presumed that they did not have an opportunity to peruse the document in the suit. At the end of the day, the minimum comfort the Court can grant the litigant is that they are given an opportunity for effective participation in any litigation and that they indeed are



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heard. After all these are all the aspects of procedure that should not impede the basic duty the Court owes to the litigant.

7.This Civil Revision Petition stands allowed accordingly. The trial Court is now required to send for Ex.P.1 in STR. No.374 of 2016 to its Court to keep the said cheque in safe custody, and make it available for inspection if it is so required by the revision petitioner as per procedure, and then allow the revision petitioner to cross examine the plaintiff on the said original cheque and return the cheque back to the concerned Court forthwith. The entire exercise must be concluded within five working days. Consequently, the connected C.M.P.No.3865 of 2022 is closed. No costs.

17.03.2022

kas/dk

Index : yes / no

Internet : yes / no

Speaking / Non speaking

Note:Office to issue order copy on 22.03.2022.



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N.SESHASAYEE, J.,

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To
learned III Additional District Judge
Puducherry.

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