



C.R.P.(PD) No.922 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 04.04.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.922 of 2022
and C.M.P.No.4719 of 2022

Anbu @ Annadurai

... Petitioner / Petitioner / Defendant

Vs.

Narayanasamy

... Respondent / Respondent / Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 20.09.2021 in I.A.No.55 of 2021 in O.S.No.245 of 2017 by the learned Principal Subordinate Court, Virudhachalam.

For Petitioner : Mr.S.Dharmakkan

For Respondent : Mrs.AL.Gandhimathi



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ORDER

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The defendant in a suit in O.S.No.245 of 2017 on the file of Principal Sub Court, Virudhachalam, which was laid by the respondent herein for money claim based on a promissory note alleged to have been executed by the defendant/revision petitioner, has taken out an application in I.A.No.55 of 2021 for appointing a Commission for expert opinion for obtaining an opinion on the genuineness of the signature in the promissory note. This came to be dismissed by the trial Court vide order 20.09.2021. The learned trial Judge has taken a view that the defendant has not produced any admitted signature in any documents which were made about the time when the promissory note was alleged to have been made. This is now under challenge.

2.1 Heard both sides. A practise is set in vogue where the judicial officer who is approached for appointing a commission / expert for obtaining an opinion as to the disputed signature, the Court insists on the production of documents containing admitted signatures that are dated about the time of the documents which contains the disputed signature. There are certain practical difficulties which are overlooked. No law requires that a person



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should keep executing documents year after year, in order they are made available readily when a certain signature to prove the genuineness, or otherwise dispute the signature of any document. Merely because a document containing the admitted signature is not available about the time of the document containing the disputed signature, does not *ipso facto* imply that an application for appointing a commission for obtaining expert opinion on the genuineness of the document must be rejected or dismissed. Obtaining the expert opinion on a disputed signature is different from the evidentiary value of the report produced by the expert. After all, an expert opinion is only a piece of evidence whose credibility may have to be decided during trial. An expert can even be cross-examined for the purpose. Therefore, it is imperative that the trial Court adopts a pragmatic approach in matters such as this.

2.2 Secondly, it is not always mandatory that a document containing admitted signature must be filed before hand to enable the Court to come to a conclusion as to whether an expert must be appointed. In all these matters, the opponent's role is only to assist the Court, but no right is vested in the opposite party to object to the same. And only a very limited right is



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available to the party opposing any such application, such as, whether the application is filed belatedly, or whether it is filed to delay the trial process.

Viewed thus, it cannot be said that producing any document containing the admitted signature need not be a pre-condition for considering the application for appointing a commission. It may be convenient to the Court, but that cannot be made a rule for considering the application for the purpose stated. The Court is also permitted to allow the application first, and require the party who has approached the Court for appointing an expert to produce such documents containing the admitted signature within the stipulated time.

3. So far as the present case is concerned, this application by the revision petitioner is alleged to have been taken after setting aside the exparte decree obtained by the respondent. This Court is also informed that the revision petitioner has produced some documents which was executed about the time of the alleged date of execution of the promissory note.

4. This is a case where the execution of a promissory note is denied by the defendant, and hence the burden is on the plaintiff to establish that it was



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executed by the defendant. But the defendant has taken upon himself the responsibility of disproving the alleged execution of the document, and there is nothing fundamentally wrong about it. For the reasons stated, this Court could not appreciate the approach of the trial Court, though it cannot be blamed entirely as this approach has come to be established in the last couple of decades.

5. To conclude, this revision is allowed and the order of the learned Principal Sub Judge, Virudhachalam in I.A.No.55 of 2021 in O.S.No.245 of 2017 is set aside, and the matter is remanded back to the trial Court. No costs. Consequently, connected miscellaneous petition is closed. The trial Court is required to dispose of the application within two weeks from the date of communication of this order.

6. The revision petitioner is now required to produce whichever documents he relies on for comparing his alleged impugned signature in the promissory note, is not genuine. It is again reiterated that the report of the Commissioner on the same is a mere piece of evidence, and its intrinsic value depends on multiple factors, which as already indicated may have to



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be decided independently during trial, and appointment of commission may not be understood as proof of any fact that is sought to be introduced through an expert opinion.

04.04.2022

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

To:

The Principal Subordinate Judge
Vridhachalam.



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N.SESHASAYEE.J.,

ds

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