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CRP No.3508 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P. No.3508 of 2016

and

CMP No. 17841 of 2016

R.Asokan

...

Petitioner

Vs

C.Jayavel

...

Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Docket order of the learned District and Sessions Judge II, Kancheepuram made in Memo in I.A.No.381 of 2015 in O.S.No.10 of 2013 dated 03.02.2016 and consequently dismissed the said Memo by allowing this Civil Revision Petition.

For Petitioner : Mr.J.Ramakrishnan

For Respondent : Mr.N.Bhaskaran

ORDER

This Civil Revision Petition has been filed to set aside the Docket order dated 03.02.2016 made in Memo in I.A.No.381 of 2015 in O.S.No.10 of 2013 of the District and Sessions Judge II, Kancheepuram, thereby allowing the memo filed by the respondent and produced the



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contemplating documents to compare the signature and thumb impression found in the promissory note.

2. The petitioner is the plaintiff. He filed a suit for recovery of money on the strength of the promissory note executed by the respondent in O.S.No.10 of 2013. The respondent disputed the execution of the very same promissory note and denied the signature found in the promissory note. Therefore, the respondent filed an application in I.A.No.381 of 2015 under Section 45 of Evidence Act to compare the signature found in the alleged promissory note with the admitted signature. The said application was allowed and the Court directed the respondent to produce the contemplating documents to send the same for hand writing expert opinion. Accordingly, the respondent filed a memo along with the document, which was executed by the petitioner, the mortgage deed, which was executed by the respondent, registered as document No.1851 of 2006 to compare the signature and thumb impression of the petitioner along with the promissory note. The said memo was accepted by the Court below which sent the for expert opinion.



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3. The learned counsel appearing for the petitioner would submit that the alleged document used by the respondent is of the year 2006. The said promissory note executed by the respondent is of the year 2010. Therefore, it cannot be compared since, the signature would have changed by the long gap of four years. In support of his contention, he relied upon the Judgment reported in **2016 (2) CTC 481** in the case of **Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakasg Babu and Ors**, in which the Full Bench of Hon'ble High Court of Hyderabad, held as follows :

“36. It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek Expert Opinion as to the comparison of the disputed Handwriting/Signature with the admitted Handwriting/Signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed Handwriting/Signature for comparison to an expert merely because the time gap between the admitted Handwriting/Signature and the disputed Handwriting/Signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed Handwritings/Signatures with admitted Handwritings/Signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate Expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the Expert



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*concerned to voice his conclusion as to whether the disputed Handwriting/Signature and the admitted Handwriting/Signature are capable of comparison for a viable Expert Opinion. The view expressed by the Division Bench in **Janachaitanya Housing Ltd. V. Divya Financiers**, 2008 (3) ALT 409 (DB), as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the filed and there is no necessity for this Full Bench to address that issue”.*

4. From the above decision it is clear that the Court is however not barred from sending the disputed signature for comparison to an expert merely because the time gap between the admitted signature and the disputed signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed signatures with admitted signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being so, there can be no hard and fast rule about this aspect and it would ultimately be for the Expert concerned to voice his conclusion as to whether the disputed Handwriting/Signature and the admitted Handwriting/Signature are capable of comparison for a viable Expert Opinion.



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5. In the case on hand, the admitted signature found in the document, which was executed by the respondent, is of the year 2006. The disputed signature found in the document is of the year 2010. The 2006 of the document is a registered one and the petitioner filed a petition for comparison of signature not only for the signature and thumb impression, the expert concerned is looking into the documents for comparison. If the expert found any difficulty while comparing the signatures and thumb impressions in both the documents, then the Court below may order for another document to be produced by the respondent.

6. In view of the above, this Court finds no infirmity or illegality in the Docket order dated 03.02.2016 made in Memo in I.A.No.381 of 2015 in O.S.No.10 of 2013 of the District and Sessions Judge II, Kancheepuram. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

08.12.2022

Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To
The Sessions Judge II,
Kancheepuram.

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