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CRP.Nos.3234 & 3236 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.Nos.3234 & 3236 of 2019
and CMP.Nos.21085 & 21090 of 2019

CRP.No.3234 of 2019

S.Prabhakaran

... Petitioner

Vs.

P.C.Murugesan

... Respondent

PRAYER:

Civil Revision petition is filed under Article 227 of the Constitution of India praying to allow this revision and to set aside the fair and final order dated 10.08.2019 made in IA.No.99 of 2018 on the file of the II Additional Subordinate Judge, Erode consequently allow the application as prayed for.

For Petitioner : Mr.V.P.Sengottuvel

CRP.No.3236 of 2019

S.Prabhakaran

... Petitioner

Vs.

P.C.Murugesan

... Respondent

PRAYER:

Civil Revision petition is filed under Article 227 of the Constitution of India praying to allow this revision and to set aside the fair and final order



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dated 10.08.2019 made in IA.No.129 of 2018 on the file of the II Additional Subordinate Judge, Erode consequently allow the application as prayed for.

For Petitioner : Mr.V.P.Sengottuvel

COMMON ORDER

The petitioner filed petition to receive CD, memory card and certificate as documents on the petitioner's side and the same was dismissed. Aggrieved by the same, the civil revision petition in CRP.No.3234 of 2019 has been filed. The petitioner also filed petition under Section 45 of Indian Evidence Act to record the respondent's voice in the open court and send the sample voice for expert opinion from the Government Forensic Lab and the same was dismissed. Aggrieved by the same, the civil revision petition in CRP.No.3236 of 2019 has been filed.

2. Heard, the learned counsel for the petitioner. Though notice was served on the respondent and name is printed in the cause list, no one appeared on behalf of the respondent before this Court in person or through pleader.

3. The petitioner is the defendant in the suit filed by the respondent



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for recovery of money. While pending the suit, the petitioner filed petition to receive the electronic evidence such as CD and the memory card as evidence on the side of the petitioner herein and the same was allowed. Aggrieved by the same, the respondent preferred civil revision petition before this Court in CRP.No.390 of 2014. This court by order dated 30.01.2018, allowed the civil revision petition and set aside the order passed by the court below. However, this Court had given liberty to the petitioner to file a fresh application for complying with the conditions as contemplated under Section 65(B) of the Act and to produce certificate to substantiate the genuineness of the electronic records sought to be marked as evidence. Further observed that there is also no comparison of voice. Therefore, the petitioner filed application on two occasions to receive CD and memory card along with the certificate issued under Section 65(B) of the Act. He also filed another application under Section 45 of the Evidence Act to record the voice of the respondent herein and to send for expert opinion.

4. As observed by this Court, the petitioner obtained certificate under Section 65(B) of the Act for the electronic records such as CD and memory card and to record the voice of the respondent herein. The specific



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case of the petitioner is that the petitioner never borrowed any amount from the respondent as alleged in the suit. He borrowed money from one, V.P.Rathnasamy and had given blank signed pronote. After settling the said amount, the said V.P.Rathnasamy failed to return the pronote to the petitioner herein. Thereafter, the said pronote was misused and handed over to the respondent herein. The same was misused by him and filed suit for recovery of money. While pending the suit, there was conversation between the petitioner and the respondent on 02.02.2012, 17.02.2012 and 04.07.2012. In the course of the said conversation, the respondent categorically admitted that he had never seen the petitioner before and whatever the amount he vowed to V.P.Rathnasamy, he would also talk to V.P.Rathnasamy. Therefore, the alleged admission is vital to the case on hand. As such, the petitioner filed petition to receive electronic records as documents with the certificate issued under Section 65(B) of Evidence Act. Without considering the above, the court below dismissed the petitions.

5. In view of the above, the fair and final orders dated 10.08.2019 made in IA.Nos.99 & 129 of 2018 on the file of the II Additional Subordinate Judge, Erode are set aside and both the civil revision petitions are allowed.



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Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.12.2022

Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.



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To
The II Additional Subordinate Judge,
Erode

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