



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.11.2021

Pronounced on : 02.02.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

C.R.P.No. 2239 of 2017

and

C.M.P.No. 10614 of 2017

P.Udhayakumar

.. Petitioner

Versus

M.Matheswaran

.. Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 02.03.2017 made in I.A.No.40 of 2017 (I.A.No.573 of 2016 - Principal District Court) in O.S.No.170 of 2015 on the file of II Additional District Court, Erode.

For Petitioner .. Mr.N.Manokaran

For Respondent .. Ms.Zeenath Begum

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 02.03.2017 made in I.A.No.40 of 2017 in O.S.No.170 of 2015 on the file of II Additional District Court, Erode.

2.The petitioner is the plaintiff and the respondent is the 1st defendant in the suit. The said suit has been filed for recovery of Rs.10,22,233/-. During the pendency of the suit, the respondent/1st defendant herein filed an I.A.No.40 of 2017 under Section 73 of the Indian Evidence Act, r/w Section 151 of C.P.C seeking a direction to the petitioner/plaintiff to appear before the Court below and to write "Pay to P.Udhayakumar" for comparison of his signature and the same was allowed, vide order, dated 02.03.2017. Challenging the same, the petitioner has filed the present Civil Revision Petition.

3. The learned counsel for the petitioner/plaintiff contended that since the first defendant/respondent's counsel has not appeared to ask the petitioner/plaintiff to write the said



writings during the cross examination, the learned counsel appearing for the petitioner/plaintiff has objected to the same. The respondent/first defendant filed the Interlocutory Application seeking a direction to the petitioner/plaintiff to appear before the Court below and to write "Pay to P.Udhayakumar". But the Court below without considering the merits of the matter, allowed the said application. Hence, the learned counsel prays for setting aside the said order.

4.The learned counsel for the respondent/first defendant contended that during cross examination of PW1, when his counsel questioned about the writings found on the top of 13 cheques, he deposed that those writings were not written by him. When the counsel, who appeared for the respondent, asked PW1 to write the said writings in a white-paper for filing the same before the Court below for comparison, though the petitioner/plaintiff accepted to write without any objection, the learned counsel for the petitioner/plaintiff has objected that such writings cannot be obtained during the cross examination of PW1. Hence, the respondent filed the Interlocutory Application only for that purpose and the same was also rightly allowed by relying upon Section 73 of the Indian Evidence Act. Hence, the learned counsel prays for dismissal of this petition.

5. I have considered the rival submissions of the learned counsel appearing on either side and perused the materials available on records.

6.According to the petitioner, he is a holder in due course of 13 cheques and he is entitled to collect the cheque amount. According to the respondent herein, in all the 13 cheques, there is a writing as "Pay to P.Udhayakumar". All those writings were written by the petitioner herein and it is not similar to the first respondent's signatures as found in the cheques. Hence, the first respondent filed I.A.No.40 of 2017 seeking a direction to the petitioner/plaintiff to appear before the Court below and to write "Pay to P.Udhayakumar" in a white-paper and file the same before the Court below for comparison. Accordingly, the said I.A was allowed by relying upon Section 73 of the Indian Evidence Act. Section 73 of the Act reads as follows:-

73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the



purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

7. Further, the learned counsel for the petitioner/plaintiff has also relied upon the decision of the Apex Court in the case of Bir Singh v. Mukesh Kumar, reported in 2019 (4) Supreme Court Cases 197. The above decision of the Hon'ble Apex Court is distinguished liable on facts to the case on hand and the same is not applicable to the facts of the present case.

8. In view of the above, this Court is of the view that there is no error in the order dated 02.03.2017 made in I.A.No.40 of 2017 in O.S.No.170 of 2015 passed by the II Additional District Court, Erode and the Civil Revision Petition is liable to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

msm

To

The II Additional District Judge,
Erode.

Copy to:

The Principal District Judge,
Erode.

+1cc to Mr.N.Manokaran, Advocate SR. No.6993
+1cc to M/s.Zeenath Begum, Advocate SR. No.6206

C.R.P.No.2239 of 2017

GPL (CO)
PR (14/02/2022)