



CRP.(PD).No. 4302 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 4302 of 2017

and

CMP.No.20226 of 2017

Raja

.. Petitioner

Versus

Kulandaivel Udayar

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 11.09.2017 made in I.A.No.883 of 2017 in O.S.No.377 of 2015 on the file of Principal District Munsif Court, Kallakurichi.

For Petitioner : Mr.R.Kumaravel

For Respondent : Mr.N. Suresh



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 11.09.2017 passed in I.A.No.883 of 2017 in O.S.No.377 of 2015 on the file of Principal District Munsif Court, Kallakurichi.

2. The respondent/plaintiff filed the suit in O.S.No.377 of 2015 before the Principal District Munsif Court, Kallakurichi, for recovery of money from the defendant. While pending the suit proceedings, the petitioner/defendant filed I.A.No.883 of 2017 under Section 45 of the Indian Evidence Act, Order 26 Rule 10(A) r/w. Sec.151 of CPC., After perusing the records, the trial Court dismissed the said application dated 11.09.2017. Aggrieved by the said order, the revision petitioner/defendant filed this revision.

3. The learned counsel for the petitioner/defendant submitted that the CD which was produced with the conversation of the



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respondent/plaintiff and the petitioner/defendant in respect of some loan transactions between the parties and it is a necessary document to prove his claim and the same was not permitted by the trial court and the same is erroneous. Hence, he prays to allow this revision petition.

4. Heard both sides and perused the materials available on record.

5. On a perusal of the records, it is seen that the suit in O.S.No.377 of 2015 before the Principal District Munsif Court, Kallakurichi, for recovery of money. When the PW1 was cross-examined, the petitioner/defendant filed I.A.No.883 of 2017 under Order 26 Rule 10(A) CPC., and Section 45 of the Indian Evidence Act, for sending "CD" containing that the voice of the petitioner and the respondent's conversation in respect of some loan transaction between them and for sending to the Tamil Nadu Forensic Science Laboratory Limited (TNSFL) and the same was dismissed by order dated 11.09.2017. After perusing the relevant records, the trial Court has



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rightly dismissed the said application under Section 65(B)(4) of the Indian Evidence Act, which reads as follows.-

"(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,

(a) identifying the electronic record containing the statement and describing the manner in which it was produced

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."



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6. It is settled law based on the judgment of the Hon'ble Apex Court in **State v. Sunil Kumar etc.**, dated 02.02.2016, stating that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirement of Section 65(B) of the Indian Evidence Act are satisfied and without producing the electronic records under Section 65(B), the documents cannot be received as evidence and it is unjustifiable and as such, the same is not maintainable and therefore, the trial Court has rightly dismissed the said application and hence, there is no illegality or irregularity in the order passed by the trial Court and therefore, the same is liable to be dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.10.2022

msm



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Index : Yes/No
Speaking Order : Yes/No

To

1. The Principal District Munsif Court, Kallakurichi.
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

msm

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