



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.01.2022

CORAM
THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P. (MD) Nos.1811 & 1812 of 2021
and M.P (MD) No.9723 of 2021

K.Thangavel

... Petitioner/Petitioner/
Plaintiff

Vs.

C.Alagappan

... Respondent/Respondent/
Defendant

COMMON PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 06.10.2021 made in I.A.NoS.493 & 494 of 2021 in O.S.No.30 of 2018 on the file of the District Munsif Court, Aranthangi.

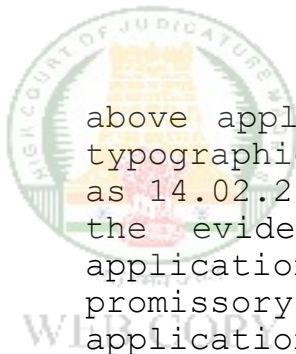
For Petitioner : Mr.R.Suriyanarayanan

ORDER

The plaintiff is the revision petitioner before this Court challenging dismissal of his two applications filed for reopening the evidence and for recalling PW.2.

2.The facts of the case are that the plaintiff has filed a suit for recovery of money due on a promissory note. It is the case of the plaintiff that he had extended a loan for a sum of Rs.50,000/- to the defendant, who had executed the promissory note dated 04.12.2016 promising to repay the same on demand. However, contrary to the assurance, no amounts were paid and also there was no response for the plaintiff's legal notice dated 30.12.2017. The defendant on receiving summons in the above suit had filed written statement *inter alia* denying the borrowal of a sum of Rs.50,000/- on 14.12.2016. The defendant would submit that he was acquainted with the plaintiff for over 20 years and the plaintiff was engaged in finance business. The defendant had borrowed only a sum of Rs.30,000/- from the plaintiff and the same was repaid along with interest on 10.10.2017. Thereafter, since differences of opinion had erupted between the plaintiff and the defendant, the plaintiff has come forward with this fraudulent suit.

3.The parties had gone into trial and the plaintiff had examined two witnesses. At that juncture, he has taken out the



above applications stating that in the evidence of PW.2, due to a typographical error, the date of the promissory note has been shown as 14.02.2016 instead of 14.12.2016. Therefore, he sought to reopen the evidence and recall PW.2 to clarify the above. These applications were resisted by the defendant by contending that the promissory note itself was a fabricated one and the present applications are nothing but an attempt to fill up lacuna. Therefore, he sought for dismissal of the above applications.

4.The learned District Munsif, Aranthangi dismissed the said applications by two separate orders both dated 06.10.2021. The learned Judge dismissed the said applications stating that the plaintiff in the guise of these applications was trying to retract the admission made by PW.2 regarding the date of promissory note. Aggrieved by these orders, the above two civil revision petitions have been filed by the petitioner/plaintiff.

5.The learned counsel appearing for the petitioner would submit that in the evidence of PW.2, date of the promissory note has been wrongly typed as 14.02.2016 instead of 14.12.2016. The plaintiff was not in any fashion trying to fill up lacuna or trying to retract admissions. He would submit that the learned Judge, therefore, has erred in dismissing the applications.

6.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7.The Controversy in these petitions is to whether the date of promissory note in PW.2's evidence as 14.02.2016 is only typographical error or whether it was consciously made. Before analyzing the above, useful reading of plaint would reveal that the plaintiff in paragraph No.1 of the plaint would contend that the suit is filed for recovery of sum of Rs.50,000/- together with interest borrowed by the defendant on 14.12.2016. Thereafter, in paragraph No.2 wherein the plaintiff had discussed about the transaction and paragraph No.4 wherein the plaintiff sets out the obligations of the defendant as well as in the cause of action paragraph, Court fee paragraph and in clause No.I of the relief, the plaintiff has described the date of the promissory note as 04.12.2016. Therefore, a reading of the plaint and PW.2's evidence would clearly show that the plaintiff has given three different dates for the borrowal and the promissory note, i.e., 14.02.2016 (as deposed by PW.2), 04.12.2016 (as narrated in paragraph Nos.2, 4, in the cause of action paragraph, Court fee paragraph and clause No.I of the relief of the plaint) and 14.12.2016(as in paragraph No.1 of the plaint).

8.Therefore, it is crystal clear that the plaintiff has not come to the Court with the definite case and the reason for seeking to reopen and recall PW.2 is not maintainable. Therefore, the learned District Munsif, Aranthangi has rightly rejected the



applications and I do not find any reasons to interfere with the same. Accordingly, these civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif,
Aranthangi.

C.R.P. (MD) Nos.1811 &1812 of 2021
07.01.2022

RK(27/01/2022) 3P 2C