



C.R.P. No.505 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

**C.R.P.No.505 of 2023
and
C.M.P. No. 4146 of 2023**

Dr.M.Sudheer

... Petitioner

Versus

M.Kamaraj

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the Order and Decreetal order dated 02.02.2023 made in I.A.No. 6 of 2023 in O.S.No.2267 of 2020 on the file of XVII Addl. Judge, City Civil Court, Chennai.

**For Petitioner : Mr.A.K.Sriram
for M/s.A.S.Kailasam & Associates**

For Respondent : Mr.P.Satheesh Kumar



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ORDER

WEB COPY The Revision Petitioner herein is the defendant in the suit in O.S.No.2267 of 2020 on the file of XVII Addl. Judge, City Civil Court, Chennai. Originally, the plaintiff Kamaraj filed a suit for recovery of money of Rs.31,84,000/- from the defendant.

2. The defendant appeared through his counsel and contested the suit. During the pendency of the proceedings, at the earlier occasion, he filed an application in I.A.No.03 of 2022 seeking to send pen drive for forensic lab, but he has not enclosed the certificate as prescribed under Sec.65-B of Indian Evidence Act (hereinafter called as 'Act'). Hence, the application was dismissed. Challenging the same, the defendant filed a Civil Revision Petition in C.R.P. No.3307 of 2022 before this Court, wherein this Court held that non-production of certificate as prescribed under Sec.65-B of Indian Evidence Act is fatal to the prayer sought by him. So, the Civil Revision Petition, as such is not maintainable and the same was dismissed. Subsequently, while producing the certificate under Sec.65-B of Indian Evidence Act as required under law, he filed another application in I.A.No.6



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of 2023 under Order 7 Rule 1-A (3) of C.P.C. before the trial court along with certificate under Sec.65-B of the Act praying to grant leave to receive the document. However, the document, which is sought to receive by the parties is the pen drive original, also produced the certificate as prescribed under Sec.65-B of the Act before the trial court. The said application was objected by the plaintiff stating that at the earlier occasion not produced the same, the claim of the defendant in C.R.P. No. 3307 of 2022 was dismissed and now, for the very same relief, the pen drive cannot be received and also for the very same purpose, the present application was filed, as such, is not maintainable. On considering both side submissions, the trial court held that the Revision Petitioner's prayer to receive pen drive, as such is not acceptable for the reason that he has not produced the document in time and also there is a direction by this Court to dispose the matter within a period of six months. Accordingly, it was dismissed. Now, challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel for Revision Petitioner argues that at the earlier occasion, the petitioner not produced the certificate under Sec.65-B



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of the Act as required under law to mark the electronic device. Now, he produced the pen drive along with the certificate under Sec.65-B of the Act, but the trial judge without considering the production of the said certificate as prescribed under Sec.65-B of the Act, erroneously dismissed the said application. In order to prove his defence, the conversation recorded by this defendant with the plaintiff is just and necessary, otherwise, he would be put into much hardship. Hence, he prayed to set aside the said findings.

4. By way of reply, the learned counsel for respondent would submit that at the earlier occasion, the defendant filed an application in I.A.No.03 of 2023 to send pen drive for forensic lab, in order to find out the genuineness of the voice recorded in the conversation, but the same was dismissed by the trial court as well as by this court due to non-production of certificate as prescribed under Sec.65-B of Indian Evidence Act. Therefore, the document, which is not available in the case record cannot be sought to be compared with the admitted samples. Accordingly, the Civil Revision Petition was dismissed. Thereafter, the petitioner in order to comply with the production of certificate under Sec.65-B of the Act, he filed subsequent



application in I.A.No.6 of 2023 along with pen drive. Unless the document is received, the defendant is not able to prove his defence. Now, he produced the document along with certificate as prescribed under Sec.65-B of the Act. But, the learned counsel for plaintiff raised objection stating that Sec.65-B certificate was issued by himself and also at the earliest point of time, he produced the affidavit stating that conversation recorded by him was removed by the plaintiff. To that effect, he relied on the affidavit filed by him in a petition in C.M.P. No. 3460 of 2016 before the trial court by invoking Sec. 200 of Cr.P.C. to register the complaint against the plaintiff.

In that affidavit, he has made averment as follows :-

“8. I further state that while so, on growing suspicion, he had all of a sudden, he attempted to snatch my cell phone from me and on seeing it, my son Tejesh had tried to get back the cell phone from him and in the meantime, the said Kamaraj attacked my son and went out of my house with my cell phone. Again, he came back within two hours and handed over my cell phone to the house watchman and went away and to my shock and dismay, the said Kamaraj had deleted all the conversation between us was deleted by him, but however, the conversation taken place between us on previous days has been recorded and kept by me in safe custody.”



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Relying the said averment, the learned counsel for respondent argues that the revision petitioner himself admits that already entire conversation was deleted by the plaintiff and without producing original, now he wanted to receive the pen drive, which is not enclosed along with the original, so, the same cannot be accepted. Further, he argues that the trial judge has rightly dismissed the application. There is no original available, without which, pen drive cannot be accepted and the pen drive, which was relied on the side of revision petitioner is not a original and hence, it cannot be accepted.

5. Heard and considered rival submissions of both learned counsel for petitioner and the respondent and perused the records.

6. On seeing the affidavit averment, only on the date of occurrence, the very conversation, which was recorded was deleted and the petitioner also contended that the conversation taken place between himself and the plaintiff on previous days have been recorded and kept by him in safe custody. So, the Revision Petitioner is holding custody of conversation and



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transferred the said conversation from his cell phone to his desktop in the document file. Now, he is producing the said conversation through pen drive along with Sec.65-B certificate, as such is maintainable in law. But, the trial court without considering the said fact, erroneously dismissed the application. Accordingly, this Civil Revision Petition is allowed and the findings of the learned judge is set aside and the trial court is directed to receive the pen drive along with Sec.65-B certificate and to dispose the proceedings as expeditiously as possible. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

09.03.2023

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To

XVII Addl. Judge,
City Civil Court,
Chennai.



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T.V.THAMILSELVI, J.

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