



CRP.No. 446 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 446 of 2021

and

CMP.No. 3869 of 2021

R. Ramasubbu

.. Petitioner

Versus

Mrs. Kalaiyarasi

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order passed in I.A.No.3 of 2019 in O.S.No.3456 of 2019 dated 07.12.2019 on the file of the VIII Assistant City Civil Court at Chennai.

For Petitioner

: Mr. D. Kanagasundaram

For Respondents

: Mr. C.R.Malarvannan



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ORDER

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This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 07.12.2019 passed in I.A.No.3 of 2019 in O.S.No.3456 of 2019 on the file of the VIII Assistant City Civil Court at Chennai.

2.Brief facts set out in a nutshell is as follows:

The petitioner borrowed a sum of Rs.6,50,000/- as hand loan from the respondent due to his urgent family expenses and had executed a promissory note on 05.03.2017, wherein he had accepted to repay the said borrowed amount with interest at the rate of 12%. Thereafter the petitioner has not returned neither the principal nor the interest, due to which a legal notice was issued by the respondent on 03.04.2019. Aggrieved over the said legal notice the petitioner herein has filed O.S.No.3456 of 2019 on the file of the VIII Assistant City Civil Court at Chennai and the learned Trial Judge passed an dismissal order in I.A.No.3 of 2019 in O.S.No.3456 of 2019 on the file of the VIII Assistant City Civil Court at Chennai. Challenging the same the petitioner has come up with this petition.



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3. The learned counsel appearing for the Revision petitioner submits that there is no privity of contract between the petitioner and the respondent and he had not signed any promissory note and he has also not seen the attestators of the suit promissory note. He further contends that the signature in the promissory note will have to be sent for expert opinion along with the contemporary signatures. Hence he prays this Court to set aside the order passed by the Court below and allow this petition.

4. The learned counsel for the respondent resisted the claim of the petitioner by filing counter affidavit, stating that there are no triable issues involved in the suit and the petitioner has not made out any case to allow the leave to defend petition, hence prays this Court to dismiss this petition.

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

6. On a fair reading of the orders passed by the Court below the learned Judge had made an observation that the signature of the petitioner has been compared in the vakalath, in the petition affidavit and the



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promissory note/Exhibit R1 and concluded that there is no variation found in the signature of the petitioner in the above said 3 documents. Even assuming that the signature in the promissory note is not the signature of the petitioner the same has to be proved with a evidence, which has not been done by the Court below which needs interference.

7. In the above circumstances, this Court is of the view that there is no legal embargo for getting opinion from the forensic Department, which would effectively assist the Court in reaching a just decision. By no stretch of imagination it would be stated that the opinion of the expert is not relevant factor for adjudication of the dispute and in order to unearth the truth, the Court can very well refer the matter for comparison.

8. For the foregoing going reasons, it is necessary to get the opinion of the handwriting expert. Hence the order passed by the Court below calls for intervention and the same is liable to be set aside, which is accordingly set aside and the Civil Revision Petition deserves to be allowed. The Trial Court shall follow the relevant procedure for referring



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the pro-note and other documents concerned to the forensic Department and to get the opinion and proceed with the case further.

9. In fine, the Civil Revision Petition is allowed. There shall be no order as to costs. Consequently connected Miscellaneous petition is closed.

22.02.2023

Speaking order : Yes/No
Neutral citation : Yes/No

Index : Yes/No
smn

To

1. The VIII Assistant City Civil Court at Chennai.

2. The Section Officer, V.R.Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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