



C.R.P.PD.No.755 of 2023

ORDER

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This Civil Revision Petition is filed against the order dated 16/12/2022 made in I.A.No.3 of 2022 in A.S.No.33 of 2019 on the file of the Additional District Judge, Namakkal.

2. The facts in brief for the disposal of this Civil Revision Petition are as follows:-

The respondent has filed O.S.No.100 of 2013, before the learned Additional Subordinate Judge, Namakkal, against the petitioner for recovery of Rs.5,91,875/-. During the course of trial, on behalf of the respondent/plaintiff, two witnesses were examined and a promissory note/Ex.A.1, which is allegedly executed by the petitioner is marked. On the side of the petitioner/defendant, D.Ws.1 and 2 have been examined and Exs.P.1 to P.6 have been marked. The trial Court after full fledged trial has ultimately decreed the suit.

3. Aggrieved by the judgment and decree passed against the petitioner in O.S.No.100 of 2013 dated 1/3/2019, the petitioner has



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preferred an appeal in A.S.No.33 of 2019, on the file of the learned Additional District Judge, Namakkal. During the pendency of the said petition, the petitioner has filed I.A.No.3 of 2022 in A.S.No.33 of 2019, under Section 45 of the Indian Evidence Act and after enquiry, the said petition was dismissed, thereby, the petitioner has preferred this revision. During the pendency of the appeal in A.S.No.33 of 2019, the petitioner has filed an application for examination of D.W.3 on his behalf.

4. Heard Mr.B.Mohan, learned counsel for the petitioner and Mr.N.Subramaniyan, learned counsel for the respondent. Perused the materials available on record.

5. During the course of trial, before the trial Court, the respondent/defendant has examined two witnesses i.e., D.Ws.1 and 2 and during the pendency of appeal, another witness by name Hariharan was examined as D.W.3 who has deposed that by abducting the petitioner/defendant, Ex.A.1 was forcibly executed. According to his evidence, on 20/10/2009, the petitioner/defendant was abducted and on the following day, Leo Tolstoy has informed him about the abduction and getting the pronote executed. It is submitted that the conversation



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between the petitioner Leo Tolstoy with Loganathan was recorded by him in six different intervals, which proves that the pronote was obtained by force.

6. There is no dispute that the signature on the said pronote belong to the petitioner/defendant. As seen from the judgment, the petitioner/defendant has denied the signature on Ex.A.1 and also taken a plea that the signature was taken on the promissory note by force. So, the petitioner has taken two inconsisting pleas in respect of the signature. According to the petitioner, on 20/10/2009, he was abducted and on 22/10/2009, a complaint was given at Namakkal Police Station. He has also given a public notice/Ex.D.5 in a newspaper on 27/10/2009. The trial Court has considered the plea of the petitioner and based on the materials available before the Court has declined to accept the contention of the petitioner that Ex.A.1 Pronote was obtained by force and that the issue has become final and suit was decreed.

7. During the course of trial, when the matter was pending before the trial Court, the petitioner has never deposited or mentioned anything about D.W.3 as Hariharan has recorded the conversation between the



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petitioner and the respondent. Further, even according to the petitioner, a criminal case has been filed by the petitioner and the same is pending. It is not clear whether the evidences of C.D and mobile phone were submitted to the Court or not. According to D.W.3, recording was done on 10/10/2018 whereas, the trial Court has passed the judgment on 1/3/2019 that means before passing the judgment, the conversation recorded by D.W.3 on 10/10/2018 was available with the petitioner. But no explanation was offered as to why he has not placed the same before the Court. At least, immediately after filing of the appeal or along with the appeal, petitioner should have filed this application. There is an inordinate delay. Further, as per the records, appeal suit is posted for argument. At this stage, present application is filed. No explanation is offered as to why the petitioner could not file this petition before the trial Court and also not given any proper explanation as to why the petitioner could not file this petition before the Tribunal.

8. As already observed that the petitioner/defendant has raised this issue before the trial Court and no issue is framed by the trial Court in respect of the allegation of the petitioner that suit pronote was forcibly obtained. In such view of the matter, this Court is of the opinion that



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the order, dated 16/12/2022, made in I.A.No.3 of 2022 in A.S.No.33 of 2019 by the learned Additional District Judge, Namakkal, does not warrant any interference.

9. Accordingly, this **Civil Revision Petition is dismissed.** No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

12/9/2023

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

The Additional District Judge, Namakkal.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order
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