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Application No.2447 of 2022
in C.S.No.106 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2023

PRONOUNCED ON : 14.08.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Application No. 2447 of 2022
in C.S.No.106 of 2021

1.S.Sangeetha

2.S.Subatra

... Applicants / Plaintiffs

Vs.

1.R.Krishnamurthy

2.Thirugnanaselvi

3.Aswini Krishnamurthy

... Respondents /Defendants

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with Order XVII Rule 10-A of CPC, praying

(i) to receive two (2) additional documents filed by the Applicant more fully described in the schedule appended to the Judge's Summons and

(ii) to issue commission to a forensic expert or a forensic laboratory to conduct forensic examination of the documents more fully described in the schedule appended to the Judge's Summons by comparing the actual and the forged signatures of the 1st Applicant and the handwriting of the 1st Respondent and to file a report before this Court.



For Applicants : Mr.M.Sricharan Rangarajan

For Respondents : M/s.V.Balasubramanian & Associates

ORDER

This application has been filed by the applicants/ plaintiffs seeking permission to receive two additional documents filed by the applicants more fully described in the schedule appended to the judge's summons and to issue a commission to a forensic expert or a forensic laboratory to conduct a forensic examination of the documents more fully described in the schedule appended to the judge's summons by comparing the actual and forged signatures of the 1st applicant and the handwriting of the 1st respondent and to file a report before this Court.

2.The averments of the petition in brief:

The applicants are the plaintiffs. The suit has been filed by the plaintiffs for recovery of money and return of gold deposited in the locker. The money belonged to the applicants were illegally withdrawn from the bank accounts of the applicants without the consent and the knowledge of the applicants. During the pendency of the suit the applicant's staff found certain documents in possession of the 1st respondent and they are vital and important for deciding the issues in the suit.



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2.1. A car bearing registration No. TN 10 BC 1818 belonging to M/s V.R.G. Constructions Pvt. Ltd. (“Company”) was being used by the 1st respondent for his personal use since year 2017. Since the company required additional vehicles for official usage, the car that was being used by the 1st respondent was taken over by the company in August-2021. During the 4th week of May-2022 when the said car was sent for service and maintenance, the staff of the applicant company discovered certain documents that were in the possession of the 1st respondent from the boot of the car. A cheque book belonging to the bank account of the 1st applicant with the 4th respondent bank containing a cheque slip with entries made by the 1st respondent and a cancelled cheque bearing No.181593 carrying the forged signature of the 1st applicant was discovered in the boot of the car under the *spare* tyre. The applicant was shocked to note that his chequebook had several entries starting from 31.12.2012 with the handwriting of the 1st respondent. The undated cancelled cheque bearing No.181593 for a sum of Rs. 10,00,000/- seemed to be in favour of the 1st respondent and it contained the forged signature of the 1st applicant. So it indicates that there is every possibility of



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the 1st respondent forging the signature of the 1st applicant. This will support the applicants contention that the 1st respondent misused the cheque book belonging to the applicants and has withdrawn several amounts without the knowledge and consent of the applicants. Hence, it is just necessary to send the above mentioned documents for forensic examination.

2.2. Since the above documents were discovered subsequent to the filing of the proof affidavit, they could not be produced at the time when the suit was filed. Hence, this application has been filed to issue a commission to take these documents to a forensic expert or forensic laboratory for conducting forensic examination on the documents fully described in the schedule appended to the judge's summons and to issue a commission to a forensic expert or forensic laboratory to conduct forensic examination of the documents more fully described in the schedule appended to the judge's summons by comparing the actual and forged signatures of the 1st applicant and the handwriting of the 1st respondent and to file a report before this Court.



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3. The brief facts of the common counter filed by the respondents

are as follows:

The present suit as well as the interim applications filed by the applicants are nothing but an abuse of process of law and were intended as a counter blast to the company petition filed by respondents 1 and 2 before the National Company Law Tribunal, Chennai. In the said proceedings, respondents 1 and 2 made allegations of misappropriation of funds against the 1st applicant as well as the other two directors of the company. It is false to state that the car bearing registration No. TN 10 BC 1818 used by the 1st respondent was taken away by the company in August-2021. The 1st respondent and the 2nd respondent are the majority shareholders and directors of a private limited company called M/s VRG Constructions Pvt. Ltd. The car bearing No. TN 10 BC 1818 was purchased and used by the respondents 1 and 2 as members of the aforesaid company for their personal and official use. But the 1st applicant, along with the other two directors, used their majority in the company and created various problems. They also mismanaged the affairs of the company. Consequently , a C.P.No.370/2020 was filed before the National Company Law Tribunal, Chennai.



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3.1. On 05.08.2021 the 1st respondent had gone to the office of the Chennai Metropolitan Water Supply Board located at MRC Nagar for some official work and the car was parked outside of the office. After completing the work when the 1st respondent return he was shocked to see that the car was missing. Immediately he lodged a police complaint on 05.08.2021 at around 6.00 P.M at the Foreshore Estate Police Station, Chennai and that has been given with CSR.No.346/2021. The preliminary investigation reveal that one of the Directors of the company Mr.Gokul Ranganath in collusion with the 1st applicant and another Director had stolen the vehicle using a spare key. They refused to return the vehicle and kept it illegally in their possession till date. The cheque book belonging to the 1st applicant has always been in the possession of the 1st applicant and all the cheques contained in the said book have also been signed only by her in the past. Some far fetched and imaginary allegations have been made in this application just to create new evidence. The allegations were made in the above said documents are cooked up stories. No prejudice will be caused to the applicants as it is only a vexatious suit filed with an intention to cause



harassment and hardship to the respondents. Since the applications have been filed just as a fishing exercise the same should be dismissed.

4. The core contention of the applicants is that certain documents alleged to have been discovered subsequent to the filing of the proof affidavit should be sent for forensic examination in order to establish the fact that the 1st respondent had forged the signature of the 1st applicant in her cheque books and he was withdrawing money without her knowledge and consent. The suit itself has been filed by the respondents by making the above allegations. One of the prayer is to receive the alleged documents. However, it is incumbent on the part of the applicants /plaintiffs to prove that these documents have been discovered in a manner so stated in the application.

5. According to the applicant, the car bearing registration No.TN 10 BC 1818 was given to the use of the 1st respondent and that was taken back by the company subsequently; later when the car was sent for service and maintenance, the staff of the applicant's company discovered these documents from the boot under the spare tyre. This was denied by the respondent by alleging that on August 5, 2021, the 1st respondent had taken



the car and parked it outside the Chennai Metropolitan Water Supply Board located at MRC Nagar, and after completing his business there, he found the car missing.

6. The respondent has also given a compliant in this regard to the Commissioner of Police in CSR.No.5346/2021 and in the CSR it is seen that the complaint was given on 05.08.2021 before the Foreshore Estate Police Station. He sent another complaint on 03.09.2021 to the Commissioner of Police, requesting to take further action on his earlier complaint in CSR.NO.5346/2021.

7.The alleged discovery by the applicants is said to have taken place during 4th week of May 2022. So the car was in the custody of the 1st applicant between August 2021 and May 2022. It is alleged by the applicants that the discovery was made nearly nine months ago and during that time, the case before the police regarding the theft of the car was pending. In these strange facts of the case, it is premature to appoint the commissioner to send the documents to the forensic department for examination.

8. Before proceeding to the above process the petitioner has to satisfactorily prove that the Car in question was not stolen but taken by the



1st applicant and that the said documents were not found until May-2022, even though the car was under the custody of the 1st applicant. Such a strenuous exercise need not stall the trial proceedings. And the parties should be allowed to go with a trial by producing the available materials. In fact the alleged signature of the 1st respondent in the cheques honored can have a better weightage than the alleged signature of the 1st respondent found in the cancelled cheques for the purpose of this case. If the applicants/plaintiffs could substantiate their contention by showing before the Court that some of the cheques which did not contain the signature of the 1st applicant were honored and amounts were disbursed to the 1st respondent and others itself can help the case of the plaintiffs.

9. Even if it is presumed for the sake of arguments that the alleged cancelled cheque contains the signature of the 1st respondent, it cannot help the case of the applicants unless it is established before this Court that the amounts have been withdrawn from the bank and for which the plaintiffs are entitled to get a decree for recovery. Under such circumstances, it is



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unnecessary to take up the exercise of sending the documents for forensic examination.

In view of the above stated reasons, the application stands **dismissed**.

14.08.2023

Index : Yes/No
Speaking Order : Yes / No
Internet : Yes/No
Neutral : Yes /No

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Pre-Delivery Order made in
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