



CRP No.2792 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2792 of 2019
and CMP.No.18289 of 2019

Shanmugam

..Petitioner

Vs.

Sangeetha

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order and decree dated 8.7.2019 in I.A.No.1 of 2019 in O.S.No.126 of 2018 on the file of the Additional District Court (Fast Track Court), Villupuram.

For Petitioner : Mr.R.Rajarajan

For Respondent : No appearance

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 08.07.2019 passed in I.A.No.1 of 2019 in O.S.No.126 of 2018 on the file of the Additional District Court (Fast Track Court), Villupuram, thereby



dismissing the application filed under Section 45 of Indian Evidence Act and Order 26 Rule 10-A r/w Section 151 of CPC, to send the Promissory Note for hand writing expert opinion.

2. Though notice has been served on the respondent and his name is printed in the cause list, none appears for the respondent either in person or through counsel.

3. The petitioner is the defendant in the suit filed by the respondent herein for recovery of money on the strength of a Promissory Note dated 03.09.2015.

4. The case of the respondent is that the petitioner borrowed a sum of Rs.10 lakhs and executed a Promissory Note on 03.09.2015. However, as agreed by the respondent, he failed to repay the said loan amount to the petitioner and as such, the petitioner filed a suit. The petitioner had taken a specific stand that he never borrowed any amount from the respondent herein and he never executed Promissory Note as alleged by the respondent herein. The said Promissory Note was a fabricated one. Therefore, pending the suit, the respondent had filed an application under Section 45 of Indian Evidence Act



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and Order 26 Rule 10-A r/w Section 151 of CPC, for getting hand writing expert opinion. The said application was dismissed on the ground that it was not filed to compare the signature found in the documents which are admitted by the petitioner whereas the petitioner filed model thumb impression along with the petition to compare with the alleged Promissory Note.

5. Further, the petitioner is always ready to compare the signature found in the alleged Promissory Note with any of the document which is admitted by him. The thumb impression would not change by the passing of time and it would always remain one and the same during the lifetime of a human. Therefore, the contemporaneous document has to be compared in the case of signatures would not be applicable in the case of comparison of thumb impression. The comparison of signatures and thumb impression are different one. Therefore, this Court finds infirmity and illegality in the order passed by the Court below.

6. Accordingly, the civil revision petition stands allowed. The order dated 08.07.2019 passed in I.A.No.1 of 2019 in O.S.No.126 of 2018 on the file of the Additional District Court (Fast Track Court) Villupuram, is hereby set aside. On receipt of the hand writing expert opinion through an Advocate



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Commissioner, the Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.01.2023

Speaking/Non-speaking order

Index : Yes/No

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To

The Additional District (Fast Track Court),
Villupuram.



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G.K.ILANTHIRAIYAN.J.

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