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C.R.P.No.3696 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.3696 of 2017
and CMP.No.17146 of 2017

Janovarani

.. Petitioner / Petitioner / Defendant

Vs

Muthusamy

.. Respondent/ Respondent / Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order in I.A.No.675 of 2017 in O.S.No.343 of 2013 on the file of the Additional District Munsif Court, Kallakurichi, dated 01.07.2017.

For Petitioner : Mrs.V.Pavithra
for Mrs.V.Srimathi

For Respondent : Mr.A.Arunbabu

ORDER

1.1 The revision petitioner herein is the defendant in O.S.No.342 of 2013 on the file of Additional District Munsif Court, Kallakurichi. The suit is laid



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for recovery of a sum of Rs.58,100/- along with interest in a promissory note dated 01.02.2012. The defence taken by the revision petitioner in her written statement is that she had borrowed a sum of Rs.30,000/- from the plaintiff and signed a blank paper as required by the plaintiff which was later converted into a promissory note by the plaintiff, and that she had repaid whatever amount that she had borrowed from the plaintiff.

1.2 The matter went to trial. The plaintiff was fully cross-examined and was again recalled and cross-examined. Thereafter, the revision petitioner/defendant had filed I.A.No.675 of 2017 under Order 8 Rule 9 CPC, for receiving additional written statement. The additional plea which the defendant intends to take relates to a certain corrections and interlineations in the promissory note. This application was resisted by the plaintiff, and the same was dismissed by the trial Court. The trial Court *inter alia* has reasoned that inasmuch as the principal defence of the revision petitioner is the one of fabrication of the promissory note in question by utilising the signed blank paper, it may not matter much as to how the body of the promissory note is. This order is now under challenge.



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2. Mrs.V.Pavithra, learned counsel appearing for the revision petitioner submitted that it was only during the cross-examination of the plaintiff, the corrections in the promissory note were noticed by the defendant, and hence, additional plea was sought to be raised, since the defendant is anxious that the good effort made during cross-examination is not lost for want of pleadings it has attempted.

3. Per contra, the learned counsel for the respondent/plaintiff submitted that vide the additional written statement now proposed to be introduced in the pleadings, the defendant assumes a position absolutely contrary to the one she had taken earlier. This upsets the equation since the plaintiff has geared up for trial only based on the pleadings as was originally made. He relied on the ratio in ***P.A.Jayalakshmi v.H.Saradha and Others*** [(2009) 14 SCC 525] and ***Chinnammal v. Prakash*** [2015-3-L.W.336].

4. The rival submissions were carefully weighed. In the written statement already filed or the one to be filed, the essential defence of the defendant is one on denial of signing the promissory note. In other words, the signature she admits, but not the body of the promissory note. This necessarily puts



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the burden partially on the plaintiff and also partially on the defendant.

After all, if it were a promissory note signed by the defendant, and have taken up a plea of failure of consideration under the promissory note, then the burden is on the defendant. On the contrary if there are corrections in the promissory note, then the plaintiff may be under an obligation to explain them, if it becomes necessary in the context of factual matrix of the case. Therefore, the additional written statement though belatedly filed, may not affect the nature of burden cast on the plaintiff vis-a-vis the proof of promissory note in question.

5. In fine, this Court allows the civil revision petition, setting aside the order of the trial Court in I.A.No.675/2017, and directs that this additional written statement be taken on record. However, for causing inconvenience to the plaintiff, this Court directs the revision petitioner to pay a cost of Rs.3,000/- to the respondent on or before 30.03.2023. The plaintiff / respondent will be at liberty to file his rejoinder to the additional written statement. The trial Court is now required to expedite and conclude the trial before 30.06.2023. No costs. Consequently, connected miscellaneous petition is closed.



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24.03.2023

Index : Yes / No

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To:

- 1.The Additional District Munsif
Kallakurichi.
- 2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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