



C.R.P.(MD).No.666 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	24.08.2023
Pronounced on	20.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.666 of 2022
and
C.M.P.(MD) No.2736 of 2022

Sankarpandi

...Petitioner

Versus

Ganesan

... Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 29.11.2021 made in I.A.No.1 of 2019 in O.S.No.498 of 2016 on the file of the Additional Subordinate Judge, Dindigul and allow the above Civil Revision Petition.

For Petitioner : Mr.D.Senthil
for Mr.P.Banu Prasath
For Respondent : Mr.S.C.Herold Singh



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ORDER

This Civil Revision Petition is preferred against the order dated 29.11.2021 made in I.A.No.01 of 2019 in O.S.No.498 of 2016 on the file of the Additional Subordinate Judge, Dindigul.

2. According to the revision petitioner, the respondent herein as plaintiff filed a suit in O.S.No.498 of 2016 for the recovery of money on the basis of the suit promissory note dated 27.05.2015, in which the petitioner herein filed a detailed written statement denying the execution of the promissory note and the signature found in the promissory note. Therefore, the burden of proof was shifted on the plaintiff. However, the respondent/plaintiff failed to take steps to prove the signature found in the promissory note belongs to the petitioner/defendant. Hence, the petitioner/defendant filed an application under Order 26 Rule 10 (a) of Civil Procedure Code, 1908 to send the disputed documents for comparison with the admitted documents. However, the trial Court dismissed the said application, against which the present revision is preferred.



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3. The learned counsel appearing for the revision petitioner would submit that the petitioner is entitled to file an application under Order 26 Rule 10 (a) of CPC to establish the fact that the promissory note was not executed by him. The findings of the trial Court is that the application is premature which is against law. Since the plaintiff who has to prove the execution of the pronote failed to take steps to prove the same, the petitioner as defendant filed the above application which was erroneously dismissed by the trial Court. Hence, the order passed by the trial Court is liable to be set aside.

4. On the other hand, the learned Counsel appearing for the respondent would submit that the attempt of the petitioner is only to drag on the proceedings and the intention of the petitioner/defendant is to defraud the respondent/plaintiff from not paying the loan amount of sum of Rs.5 lakhs borrowed by the petitioner/defendant on 27.05.2015 from the respondent/plaintiff. Hence, the trial Court has rightly dismissed the application, which calls for no interference.

5. Heard the learned counsel on both sides and perused the materials



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6. Admittedly, the respondent/plaintiff has filed the suit for the recovery of money by stating that the petitioner/defendant borrowed a sum of Rs.5 lakhs on 27.05.2015 and executed the suit promissory note on the same day. However, in the written statement filed by the petitioner/defendant, the receipt of the said amount from the plaintiff under promissory note and execution of the promissory note was specifically denied and it is stated that the signature found in the pronote do not belong to the defendant. The trial Court in the impugned order found that the petitioner/defendant failed to reply to the legal notice issued by the respondent/plaintiff before filing of the suit and also held the petitioner/defendant having ample opportunity to cross examine the plaintiff with regard to the execution of the suit promissory note.

7. By stating so, the trial Court observed that the above application is premature and dismissed the same by giving liberty to the petitioner/defendant to file such petition with admitted document at appropriate time. When there is specific denial of the execution of the suit



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promissory note by the petitioner/defendant, the trial Court ought to have allowed the said application filed by the petitioner/defendant for an expert opinion to have a fair adjudication. Whether the signature found in the suit promissory note belong to the petitioner/defendant can be ascertained only by comparing the disputed signature with the admitted signature of the petitioner/defendant.

8. Therefore, the order passed by the trial Court is set aside. The Civil Revision Petition is allowed. The trial Court is directed to carry out the exercise in sending the disputed signature for comparison to the expert opinion within a period of one month. Accordingly, this Civil Revision Petition is disposed of. Consequently, Civil Miscellaneous Petition is closed.

20.12.2023

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Index:Yes/No

Speaking Order : Yes/No



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K.GOVINDARAJAN THILAKAVADI,J.

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To

The Additional Subordinate Court, Dindigul

ORDER made in

C.R.P.(MD) No.666 of 2022

and

C.M.P.(MD) No.2736 of 2022

20.12.2023