



C.R.P(MD)No.1441 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **23.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1441 of 2023

and

C.M.P(MD)No.7220 of 2023

Vasanth (Died)
*(Amended as per order in I.A.No.363
of 2017 dated 21.07.2017)*

Mathias

...Petitioner/Petitioner/
2nd Defendant

Vs.

1.T.Anitha Mary

...Respondent/Respondent/
Plaintiff

2.Shiji

3.Biju

...Respondents 2 & 3/
Petitioners 2 & 3/
Defendants 2 & 3

*(Respondents 2 and 3 are none other
than the sons of the petitioner and
hence no separate notice is required
since they are residing in the same
address)*

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records of the fair and decreetal order passed in I.A.No.4 of 2023 in O.S.No.158 of 2013 on the file of the



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learned Subordinate Judge, Padmanabhapuram dated 13.03.2023 and set aside the same.

For Petitioner : Mr.Ananth C.Rajesh

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order dated 13.03.2023 in I.A.No.4 of 2023 in O.S.No.158 of 2013 on the file of the learned Subordinate Judge, Padmanabhapuram.

2. The petitioner is the second defendant in O.S.No.158 of 2013 before the learned Subordinate Judge, Padmanabhapuram. In the suit, the petitioner filed I.A.No.4 of 2023 to ex-punch Exhibit A1 (Cheque) which is said to have been executed by the petitioner's wife, who was arrayed as the first defendant in the above suit.

3. It is the case of the petitioner that Exhibit A1 is a xerox copy of the cheque, which is said to have been signed by the petitioner's wife and therefore, Cheque ought not to have been allowed to marked as Exhibit A1.



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4. The learned counsel for the petitioner fairly concedes that parallel proceeding for dishonour of the same cheque was subject matter of C.C.No.185 of 2012, wherein, the petitioner's wife was convicted by the Magistrate's Court. It is submitted that further appeal was filed by the petitioner's wife during her life time. However, she died and therefore, the proceedings have come to an end. It is therefore submitted that the subsequent proceeding initiated to recover the amount in O.S.No.158 of 2013 on the strength of the xerox copy of the cheque which was marked as Exhibit A1 in C.C.No.185 of 2012 cannot be countenanced.

5. I have considered the arguments advanced by the learned counsel for the petitioner.

6. I do not find any reasons to interfere with the impugned order. The admitted facts of the case are that the petitioner's wife was convicted in C.C.No.185 of 2012 for dishonour of the cheque, photo copy of which was marked as Exhibit A1. The original of Exhibit A1 would be a matter of record in C.C.No.185 of 2012. Although, the plaintiff is required to produce the original, the provisions of the Indian Evidence Act also allows marking of secondary evidence where originals are not available.



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Photo copy of the cheque, which was subject matter of C.C.No.185 of 2012 can be considered as a secondary evidence.

7. That being the case, the impugned order rejecting the application filed under Section Order 13 Rule 1 and 8 of C.P.C does not call for any interference. All the issues are left open to be canvassed by the petitioner before the learned Subordinate Judge, Padmanabhapuram regarding admissibility and proof of Exhibit A1.

8. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The learned Subordinate Judge,
Padmanabhapuram



C.R.P(MD)No.1441 of 2023

2. The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.SARAVANAN,J.

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