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C.R.P(MD).Nos.1460 and 1461 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.03.2023

Pronounced on : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).Nos.1460 and 1461 of 2019

and

C.M.P(MD)No.7747 of 2019

S.Thavamani

... Revision Petitioner/Defendant

in both CRPs

Vs.

A.Ponnuchamy

... Respondent/Plaintiff

in both CRPs

PRAYER in C.R.P(MD)No.1460 of 2019: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree made in I.A.No.1 of 2019 in O.S.No.78 of 2008 dated 10.07.2019 on the file of the Additional Subordinate Court, Srivilliputtur.

PRAYER in C.R.P(MD)No.1461 of 2019: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree made in I.A.No.2 of 2019 in O.S.No.78 of 2008 dated 10.07.2019 on the file of the Additional Subordinate Court, Srivilliputtur.

For Petitioner : Mr.M.Thirunavukarasu in both CRPs

For Respondent : Mr.N.Dilipkumar in both CRPs.



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COMMON ORDER

These Civil Revision Petitions are filed against the order and decree dated 10.07.2019 passed in I.A.Nos.1 of 2019 and 2 of 2019 in O.S.No.78 of 2008 on the file of the Additional Subordinate Court, Srivilliputhur.

2. The defendant in O.S.No.78 of 2008 on the file of the Additional Subordinate Court, Srivilliputhur is the Revision Petitioner in these two Civil Revision Petitions.

3. The brief facts of the case:

(i) The respondent is the plaintiff in O.S.NO.78/2008 on the file of the Additional Subordinate Court, Srivilliputhur. He filed the said suit against the revision petitioner/defendant for recovery of loan amount upon the averments that the defendant obtained loan Rs.3,00,000/- and executed a letter admitting the loan, the plaintiff has been demanding the loan from the defendant, but the defendant defaulted in repayment; thereafter, in support of the said loan, on 03.03.2008 the defendant issued a cheque bearing number K.No.362111 of City Union Bank Ltd., Rajapalayam; when the cheque was presented for clearing, the same was returned as account closed. Hence, the plaintiff filed the suit for recovery



of money. The revision petitioner/defendant denied the averments of the plaintiff by filing detailed written statement and additional written statement.

(ii) During trial on the side of the plaintiff, Ex.A.1 to Ex.A.3 were marked. The defendant disputed the signature found in the Ex.A.1 to Ex.A.3 and wanted to compare with his admitted signature found in the document of the year 2001, which was registered in Book.I of Vol.833 page 227 to 231 of Kelarajakularaman Sub Registrar Office. Therefore, the defendant filed the petitions in I.A.Nos.1 of 2019 and 2 of 2019 in O.S.No.78 of 2008 to send for the document from the said Sub Registrar Office and also to send the same along with Ex.A.1 to Ex.A.3 for handwriting expert opinion. The plaintiff contested these petitions stating that the defendant filed these petitions to drag on the suit proceedings when the defendant admitted in his written statement about the issuance of the cheque during the course of his business transaction. After hearing both sides, the Trial Court has dismissed both the petitions on 10.07.2019.

4. Aggrieved by the orders of the Trial Court, the defendant moved this Court by way of these respective Civil Revision Petitions.



5. Heard both side and perused the records in these Civil Revision Petitions.

6. The learned counsel appearing for the revision petitioner has placed his arguments that the revision petitioner is the defendant in the main suit in O.S.No.78 of 2008 on the file of the Trial Court. The respondent has filed the main suit on false averments that the petitioner borrowed Rs.3 lakhs on 05.10.1998 for which the petitioner issued the cheque on 16.02.2008. No prudent man would wait for 10 years to recover the money. The respondent has marked three exhibits under Ex.A.1 to Ex.A.3 stating that those documents bear the signature of the petitioner. The petitioner never signed those exhibits at any point of time and they are forged and fabricated one by the respondent. The petitioner has put his signature in a sale deed dated 21.12.2001 and he admits his signature found therein. The sale deed was registered with the Sub Registrar Office of Keelarajakularaman. In order to prove his case, the petitioner has filed petitions in I.A.No.1 of 2019 and I.A.No.2 of 2019 to send for the document from the Sub Registrar Office and to send the same with disputed document for hand writing expert opinion. But, the Trial Court without considering the facts and circumstances of the case and without giving sufficient opportunity dismissed both petitions. When



a party disputes his signature in a document, it is the safest way to decide issue of disputed signature is to refer disputed and admitted signature for expert opinion. The Trial Court has failed to note the settled principle and hence, the revision petitioner may be given an opportunity to prove his case and thereby, these civil revisions petitions may be allowed.

7. In support of his argument, the learned counsel for the revision petitioner has relied on the following decisions rendered by this court.

(1) 2023 (1) CTC 9 (Surendran /v/ G.Selladurai & ors) wherein it is held in paragraph No.23 as follows:

*“23.It is quite surprising that the Court below straight away undertook the exercise of comparing Ex.A3 & Ex.B1 documents and it has come to a conclusion that the signatures found therein are matching. In the first place, the Court below ought not to have compared the signature when only the Photocopy of Ex.A3 was available. It is true that Section 73 of the Indian Evidence Act enables the Court to compare signatures and to render a finding. However, where the Court chooses to compare the signatures by itself, then the finding cannot be based on subjective satisfaction and there should be specific reasons set out for arriving at a conclusion. The law on this issue has been settled in the Judgment in **B.Radhamani v. S.Charubala**, 2018 (4) CTC 164; and **Subbaiya Gounder v. Velathal and others**, 2021 (1) LW*



421. Hence, the safest way to decide on disputed signatures is to refer the disputed signature and the admitted signature ante litem motam to an Expert and get his opinion. The Apex Court in **Thiruvengadam Pillai v. Navaneethammal and another**, 2008 (4) SCC 530, had made this position very clear. On carefully going through Paragraph 7 of the Judgment, it is seen that the Court below has not given any reason as to how it came to a conclusion that the signatures found in Ex.A3 & Ex.B1 are the same.

2) **2003-3 Law Weekly 649 (Palaniammal & Others /v/ Palaniswami & others)** wherein it is held in paragraph No.6 as follows:

“6...Merely because of the reason that the trial Court has compared the admitted signature and the disputed signature invoking Sec.73 of the evidence Act, there is no bar or ban for the first appellate Court sending the documents for canvassing the expert's opinion. Under such circumstances, and opportunity has got to be given for the comparison of the documents by a handwriting expert.”

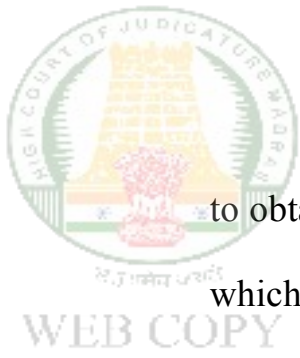
3) **2005(3) CTC 286 (Chinnappan & Others /v/ Chinnammal)** wherein it is held in paragraph No.12 as follows:

“12....It follows, the dismissal of the petition by the trial Court by stating that the suits is pending for more than 7 years and therefore, there is no necessity to compare the signatures of the second defendant, first



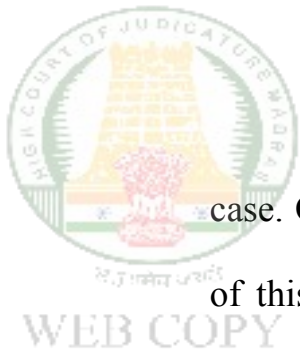
defendant and his two sons and the thumb impression of the plaintiff along with admitted signatures and thumb impression, cannot be said to be proper and the trial Court has committed an error in the approach made for dismissing the petition. Therefore, the order of the trial Court is to be set aside.”

8. The learned counsel appearing for the respondent vehemently contended that the suit is filed in the year 2008 and the petitioner obtained loan from the respondent on 05.10.1998 and given a letter regarding the loan. The respondent was serving in Army and the petitioner committed default in repayment and on repeated demand by the respondent, the petitioner has given a cheque on 16.02.2008 in support of the loan. He would further argue that in an earlier occasion, the petitioner obtained loan on 05.04.1998 and had given a letter admitting the loan and repaid the same. The petitioner has not raised any objection regarding his signature in the disputed document in his written statement, but he admitted the issuance of the cheque to some other persons and taking advantage of the same the respondent forged the document. The respondent marked three exhibits during his evidence. The petitioner prolonged the case for the reason known to him. Now, by way of further prolong the suit proceedings, after lapse of 8 years, the petitioner has filed the petitions belatedly to send for the document and



to obtain handwriting opinion. Ex.A.1 and Ex.A.2 are handwritten letters which are written by the petitioner himself and both are not continuous documents. They are related to different dates. Ex.A.3 is also the cheque issued by the petitioner during his business transactions as per written statement. As per Section 73 of the Evidence Act, the Trial Court is empowered to compare the signatures of the petitioner and there is no necessity for handwriting expert opinion. The Trial Court has rightly discussed and dismissed both petitions. Therefore, Civil Revision Petitions are liable to be dismissed.

9. On hearing both and on perusal of records, it is clear that the respondent as plaintiff has filed the main suit in O.S.No.78 of 2008 on the file of the Additional Subordinate Court, Srivilliputhur for recovery of money. The respondent has marked three documents as Ex.A.1 to Ex.A.3. The respondents states that Ex.A.1 and Ex.A.2 - hand written letters of the petitioner and Ex.A.3 - cheque was issued by the petitioner in support of loan lent by the respondent to the petitioner. The petitioner contends that the cheque is forged one as the cheque related to bank account, which was already closed and that the respondent used one of the cheque issued to some persons during business transaction 10 years back. The petitioner relied on citations of this court in support of his



case. On perusal of the above citations, they are not relevant to the facts of this case. In one case, photocopy of document bearing the disputed signature was discussed and other two cases, relating to the same decision that there is no bar or ban for the court sending the documents for canvassing the expert's opinion eventhough the court invoked power under Section 73 of the Evidence Act for comparison the signatures. Here the case is different. The respondent let in oral evidence and marked the handwritten letters of the petitioner as Ex.A.1 and Ex.A.2 and also marked the cheque under Ex.A.3. Further, the petitioner himself admitted in his written statement that the respondent forged one of the cheque issued by the petitioner in favour of the some other persons at the time of business transactions. Ex.A.1 and Ex.A.2 are relevant to the period 1998 and Ex.A.3 relates to 2008. The petitioners want to compare the documents relates to the year 2001. There is no contemporaneous period for the same. It is pertinent to note here that though the petitioner took a plea that in respect of cheque in question, he closed the bank account 10 years back, he has not placed sufficient material whether he has surrendered all his unused cheques to the bank and whether he has furnished details of used cheques issued in favour of any person. In such circumstances, the version of the respondent, the petitioner has belatedly filed the petitions in I.A.No.1 of 2019 and 2 of 2019 in O.S.No.78 of



C.R.P(MD).Nos.1460 and 1461 of 2019

2008 in order to prolong the suit proceedings further and the same was correctly upheld by the Trial Court while dismissing the said petitions. Considering the above facts and circumstances, this court is of the view that the revision petitioner in these civil revision petitions has no merits in his case and the Trial Court has rightly passed the impugned orders in the petitions in I.A.Nos.1 of 2019 and 2 of 2019 in O.S.No.78 of 2008, which need no interference by way of this Civil Revision Petitions and thus, this Civil Revision Petitions fail and the same are liable to be dismissed.

10. In the result, this Civil Revision Petitions are dismissed. Consequently the connected miscellaneous petition is also dismissed. No costs.

23.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd



C.R.P(MD).Nos.1460 and 1461 of 2019

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To

- 1.The Additional Subordinate Court,
Srivilliputtur.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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