



C.R.P.(MD)No.1455 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 06.07.2023

Delivered on : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.1455 of 2018

and

C.M.P.(MD)No.6296 of 2018

N.Revathi

... Revision Petitioner/
Petitioner/ Defendant

Vs.

C.Saravanan

... Respondent / Respondent /
Plaintiff

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 09.02.2018, in I.A.No.5 of 2018 in O.S.No.19 of 2017, on the file of the Additional District Judge, Karur.

For Petitioner : Mr.K.Govindarajan

For Respondent : Mr.H.Arumugam

ORDER

The instant Civil Revision Petition has been filed against the fair and decreetal order, dated 09.02.2018, in I.A.No.5 of 2018 in O.S.No.19 of 2017, on the file of the Additional District Judge, Karur.



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2. The revision petitioner is the defendant before the trial Court.

She filed an application before the trial Court, to receive additional written statement, which was dismissed by the Court below, on 09.02.2018.

3. Aggrieved with the above order, the petitioner / defendant has come up with this revision petition. The main ground urged by the revision petitioner is that, their additional written statement does not contain inconsistent plea, and it only put forth one more defence. He would also submit that in the written statement their specific defence is that she did not borrow money, and that she did not execute the suit pro-note. Further she also filed an application for examination of Thumb impression by the finger print expert. It is also the submission of the learned petitioner's counsel that, the handwriting expert has found that the thumb impression found in the pro-note is that of the admitted thumb impression of the revision petitioner / defendant.

4. After such finding, the defendant has filed an application, to receive the additional written statement, wherein, they took a new plea that



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the thumb impression found in the pro-note is of her. However, she stated in the additional written statement that the blank pro-note executed in favour of Saraswathi Finance and Srimanali Finance, must have been misused by the plaintiff.

5. Therefore, the trial Court has found that, in the very additional written statement, the defendant has withdrawn her earlier stand taken in the written statement and has introduced a new plea. Therefore, ultimately, dismissed the application.

6. In the instant Civil Revision Petition, the learned counsel for the petitioner would submit that being the defendant, she is entitled to take inconsistent plea, and also would contend that the very finding of the finger print expert is not the conclusive proof, therefore, he would contend that that the finding of the trial Judge in not allowing the application to receive the additional written statement is defective and hence, prayed to allow this application.



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7. However, the learned counsel for the respondent would submit that the petitioner in his written statement has taken a specific plea that the signature found in the suit pro-note is not that of his signature, and that when such defence has been taken, filing the additional written statement withdrawing such admission is contrary to law, and therefore, prayed to dismiss this application.

8. The learned counsel for the revision petitioner has relied upon the judgment of the Hon'ble Supreme Court, reported in **2007-5-SCC-602 (Usha Balashaheb Swami and others V. Kiran Appaso Swami and others)**. Wherein, it has been held that the defendant is entitled to take a new defence and also to plead inconsistent stand. The learned counsel for the revision petitioner would also rely upon the judgment of the learned Single Judge of this Court reported in **2005-5-CTC-785 (Muthusamy V. Thangaraj)** and would submit that the commencement of trial is not a bar in allowing the application for receipt of the additional written statement.



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9. However, the learned counsel for the respondent would rely upon the judgment of the Hon'ble Supreme Court reported in **2009-14-SCC-525 (P.A.Jayalakshmi V. H.Saradha and others)** and would submit that the commencement of the trial is a bar to receive the additional written statement, and he also relied upon the another Judgment of this Court rendered by the Hon'ble Single Judge of this Court reported in **2020-2-MLJ-17 (Gangadurai V. E.N.Palanichamy, Trustee)**. Wherein, it has been held that, when the defendant adds additional facts which were inconsistent with the original written statement then the same would certainly prejudice the petitioner, especially, when the trial has commenced.

10. I have given my anxious consideration to the either side submission.

11. According to the plaint averments, the revision petitioner/ defendant borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) on 30.10.2011, and in evidence thereof, she executed a promissory note in favour of the plaintiff. In respect of this allegation, the defendant in his written statement stated as follows:



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*“This defendant reiterate she has not borrowed any amount much less the one mentioned in the alleged suit promissory note from the plaintiff and **she never affixed her thumb impression nor has signed the alleged promissory note.**”*

12. After filing the above written statement, the defendant has moved an application to send for the suit pro-note for the opinion of the finger print expert. Ultimately, the finger print expert found that the thumb impression found in the suit pro-note is that of the defendant.

13. It appears from the records that, at the time of commencement of the trial, the revision petitioner has come forward with an application seeking leave of the Court to receive the additional written statement. But, in the additional written statement, the revision petitioner / defendant has accepted her thumb impression. However, she contended that once she had signed the unfilled blank promissory note of during 2003, to “Saraswathy Finance” and “Srimanali Finance” and that such pronote have been misused by the plaintiff.



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14. As rightly found by the learned trial Judge, the conduct of the petitioner / defendant assumes significance. In this case, when the revision petitioner / defendant has denied the thumb impression in the disputed suit pro-note, and gone to an extent to send the document for the comparison of the thumb impression by an expert, the filing of an application seeking leave of this Court to file additional written statement, that too withdrawing his admission made in the written statement, in respect of his thumb impression, should be viewed carefully. More particularly, he filed this application once the finger print report comes against her, with a finding that the thumb impression found in the unfilled pro-note is that of the defendant. It is true that the application to receive additional written statement to be liberally considered. But not when there is mutually destructive plea by withdrawing her earlier admission towards disowning her thumb impression in the suit property. The conduct of the plaintiff, in unfurling his defences, compartmentally, that too when she was not able to get favourable report from finger print expert, would also assumes much significance in deciding this application.



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15. At this juncture, it is also relevant to mention the judgment of this Court reported in **2007-3-LW-205 (Chinnammal V. Shanmugam)**, wherein, in paragraph No.17, this Court held that a new plea which is mutually destructive to the earlier plea should not be permitted to be raised by way of an additional written statement.

16. In this case, in uncertain terms, the defendant denied the thumb impression found in the pro-note. However, in the additional written statement, she took a contrary plea that thumb impression belonged to her. However, it was given to some third party and was misused by the plaintiff. Therefore, this Court of the firm view that the calculative move of the petitioner and by putting forth the piecemeal defence cannot be entertained and has to be deprecated by dismissing this application. Therefore, this Court finds no ground to interfere with the order of the learned trial Judge.

17. In the result, the instant Civil Revision Petition is **dismissed**. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

01.08.2023

NCC : Yes/No
Index : Yes/No
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To

1.The Additional District Judge,
Karur.

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



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C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in
C.R.P(MD)No.1455 of 2018

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