



C.R.P.No.1186 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

Civil Revision Petition No. 1186 of 2023

and

Civil Miscellaneous Petition No. 8187 of 2023

Sivakumar

... Petitioner

Versus

Parthiban

.... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal Order dated February 01, 2023 passed in I.A.No. 10 of 2022 in O.S.No. 24 of 2021 on the file of Additional District Judge, Fast Track Court, Villupuram.

For Petitioner : Mr.G.Mohammed Aseef

For Respondent : Mr.V.Hari Babu

ORDER

This Civil Revision Petition has been filed by the revision petitioner, who is the respondent in I.A.No.10 of 2022 in O.S.No.24 of 2021 on the file of 'Additional District Judge, Fast Track Court, Villupuram' ['Trial Court' for short], assailing the Order dated February 1, 2023 made therein.



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2. The revision petitioner is the plaintiff while the respondent herein is the defendant in O.S.No.24 of 2021. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. Sum and substance of the plaint is that the plaintiff is a Partner at SSK Constructions. The plaintiff and the defendant are Class-I Government Contractors and also friends. Since the defendant was unwell, he requested the plaintiff to take care of his business commitments. The plaintiff acceded to the request. The defendant for his medical expenses and for also his business, borrowed a sum of Rs.28,00,000/- [Rupees Twenty Eight Lakhs only] totally on three different occasions between as tabulated hereunder:

S.No.	Date	Sum	Cheque Number	Drawn on
1.	January 20, 2020	Rs.10,00,000/-	031960	Indian Bank, Main Branch, Villupuram
2.	February 29, 2020	Rs.10,00,000/-	031961	”
3.	June 25, 2020	Rs.8,00,000/-	031962	”
	Total	Rs.28,00,000/-		

3.1. Further case is that, thereafter, on June 25, 2020, the



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defendant issued a post-dated cheque dated December 4, 2020 bearing cheque no.430040 drawn on Indian Bank for a sum of Rs.28,00,000/- [Rupees Twenty Eight Lakhs only] in favour of SSK Constructions, in which the plaintiff is a partner. At request of the defendant, the plaintiff deposited the same on January 6, 2021 for collection, and the same was returned with an endorsement - '*exceeds arrangement*'. Hence, the plaintiff issued legal notice dated January 13, 2021 to the defendant. The defendant refused to receive the same and managed its return on January 18, 2021. Hence the Suit for recovery of Rs.28,00,000/- along with interest.

4. Sum and substance of the written statement is that no such transactions took place between them as alleged. The defendant was sick in the year 2016 and he allocated his contracts to the plaintiff. In January 2020, during audit, the defendant came to know that the plaintiff had misappropriated his funds and therefore, a *panchayat* was convened wherein the plaintiff admitted his misdeeds and misappropriation of a sum of Rs.28,00,000/-, and agreed to pay the same. The same was reduced into an agreement on January 18, 2020, pursuant to which, the plaintiff issued three cheques in favour of the defendant as tabulated hereunder:



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S.No.	Date	Sum	Cheque Number	Drawn on
1.	January 20, 2020	Rs.10,00,000/-	031960	Indian Bank, Main Branch, Villupuram
2.	February 29, 2020	Rs.10,00,000/-	031961	”
3.	March 30, 2020	Rs.8,00,000/-	031962	”

4.1. Further case is that, thereafter the defendant realised the entire amount by depositing the same into bank. The plaintiff retained the original of said Agreement dated January 18, 2020 with himself. Further case is that plaintiff must have taken other cheques leaves and promissory notes executed by the defendant for security purposes for use in business transactions and filed this false Suit.

5. While the plaint is filed on February 15, 2021, the written statement is filed on September 4, 2021. Thereafter, the defendant filed I.A.No.10 of 2022 under Order XII Rule 8 read with Section 151 of Code of Civil Procedure, 1908 ['CPC' for short] directing the plaintiff to produce the cheque bearing number 031962 of Indian Bank, Villupuram. The defendant filed an affidavit therein, whereby he contended that the plaintiff issued three cheques as tabulated herein above in favour of the defendant and took back the said Agreement dated January 18, 2020; that thereafter, as demanded by the plaintiff for an adjustment, the defendant returned the



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Cheque bearing number 031962 and received another Cheque bearing number 031981 dated June 25, 2020 drawn on Indian Bank for the same sum of Rs.8,00,000/-; that all the three cheques were realised later. According to the defendant, the Cheque bearing number 031962, which he returned to the plaintiff, would help the defendant prove his case and accordingly, prayed for a direction to produce the same.

6. The plaintiff as respondent therein filed a counter therein denying the execution of the Agreement dated January 18, 2020, and the issuance of Cheque bearing number 031981 dated June 25, 2020 as alleged. He contended that he is unaware of the particulars about Cheque bearing number 031962, such as to whom it was issued, and that the said cheque is not in his custody.

7. The Trial Court after hearing either side, concluded that the explanation offered by the plaintiff is not convincing and satisfactory and believed that the original of the cheque in question is with the plaintiff. Accordingly, directed the plaintiff to produce the same.

8. Aggrieved by the same, the plaintiff has come up with this Civil Revision Petition.



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9. Learned Counsel for the revision petitioner / plaintiff

submits that the plaintiff has denied the custody of the Agreement dated January 18, 2020 as well as the Cheque bearing number 031962. In these circumstances, the Trial Court ought not to have invoked Order XII Rule 8 of CPC. The Order passed by the Trial Court is perverse in law. Accordingly, he prays to set aside the Order and dismiss the said Interlocutory Application. He relies on the Judgment dated April 21, 2016 made by a learned Single Judge of this Court in ***C.R.P. [PD] No.1262 of 2016 viz., S.Karthikeyan -vs- M/s Sapphire Benefit Fund Limited.***

10. Learned Counsel for the respondent herein / defendant

submits that the Trial Court arrived at a factual finding that the cheque in question is with the plaintiff and rightly invoked its power under Order XII Rule 8 of CPC. Further he submits that the said Cheque originally belongs to the plaintiff and he would have access to particulars about the same. Hence, there is no need to interfere with the findings of the Trial Court. Accordingly, he prays to dismiss the Civil Revision Petition.

11. Heard on either side. Perused the materials on record.



12. The plaintiff denied the execution of the Agreement dated

January 18, 2020 as well as the return of Cheque bearing number 031962 to the plaintiff, as alleged by the defendant. The defendant in his Written Statement has stated that he had realised all the three cheques including the cheque in question. Hence, the defendant has to prove his case that he returned the cheque in question and obtained Cheque bearing number 031981 dated June 25, 2020 in return. The main question to be decided in the main Suit is whether the defendant borrowed a sum of Rs.28,00,000/- from the plaintiff and issued Cheque bearing number 430040 in favour of the plaintiff or not. When the party to the proceedings has admitted in her/his pleadings or the proceedings under Order XI of the Code of Civil Procedure, 1908 about possession and custody of a particular document or a party to the proceedings established or proved the custody of the document with the other party, in such a scenario, the party to the proceedings can invoke Order XII Rule 8 of CPC [See **Karthikeyan's Case** (cited *supra*)]. Custody of the cheque cannot be assumed. When the plaintiff never admitted the execution and custody of the Agreement dated January 18, 2020 as well as the Cheque bearing number 031962, and when the defendant has failed to prove his case that the custody of the cheque in



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question is with the plaintiff, Order XII Rule 8 of CPC cannot be invoked and for that reason that Trial Court's Order dated February 1, 2023 is not in tune with the provisions of the Code of Civil Procedure, 1908 and hence, liable to be set aside.

13. It is clarified that observation by this Court on the merits of the case, if any, shall not be binding on the Trial Court.

14. Resultantly, the Civil Revision Petition is allowed. The Trial Court's Order dated February 1, 2023 passed in I.A.No.10 of 2022 in O.S.No.24 of 2021 is set aside and the said Interlocutory Application is dismissed. Considering the facts and circumstances of this case, there shall be no order as to costs.

04.12.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
MSM

To

The Additional District Judge
Fast Track Court
Villupuram.



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R. SAKTHIVEL, J

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