



CRP.No.2943 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.2943 of 2023
and
CMP.No.18183 of 2023

R.Sekar

... Petitioner

Versus

P.Raghuram

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India,
praying to set aside the decree and order passed in I.A.No.1 of 2022 in
O.S.No.5318 of 2020, dated 06.03.2023, by the learned XVII Additional
Sessions Judge, Chennai.

For Petitioner : Mr.S.S.Kumar
For Respondent : Mr.Sandeep Shah
for M/s.Shah & Shah

ORDER

The petitioner has filed this petition to set aside the decree and order
passed in I.A.No.1 of 2022 in O.S.No.5318 of 2020, dated 06.03.2023, by
the learned XVII Additional Sessions Judge, Chennai.



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2. Heard Mr.S.S.Kumar, learned counsel for the petitioner and Mr.Sandeep Shah learned counsel appearing for the respondent and perused the materials available on record.

3. The petitioner is the defendant in O.S.No.5318 of 2018 on the file of the XVII Additional Sessions Judge, Chennai, against whom the respondent/plaintiff filed a suit for recovery of money with an alternative prayer. The petitioner/defendant appeared through counsel and filed a written statement denying the plaintiff's claim. According to the plaintiff/respondent, the defendant/petitioner borrowed a loan of Rs. 15 lakhs to meet his business commitments and executed a promissory note promising to repay on demand with interest. As security, he handed over the original sale deed dated 31.10.1995 by depositing the title deed. Despite the demands, the defendant failed to pay the amount, hence the suit was filed.

4. The defense taken by the defendant is that he had a financial transaction with one Gopal in the year 2006 for an amount of Rs.10 lakhs, and property documents with unfilled promissory notes were given to said Gopal. Though he repaid the amount in the year 2010, Gopal demanded more



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and sought to ascertain the age of the ink and his signature in the execution portion of Ex.A1. The plaintiff strongly objected to the application, stating that after the completion of evidence, the defendant came forward with this vexatious application to drag on the proceedings and that no such procedure could be adopted to determine the age of the ink before the forensic department. Therefore, he prayed to dismiss the application.

6. Considering both sides' submissions, the learned trial Judge held that after completion of the evidence, the application was filed, and there is no possibility to ascertain the age of the ink before the forensic lab. Thus, the petition was dismissed. Aggrieved by this, the present revision has been filed.

7. Heard both sides. Upon perusal of the written statement filed by the defendant, it reveals that the suit was filed in the year 2020, but the written statement was filed by the defendant in April 2021. In the written statement, the defendant took a definite stand that the suit promissory note was not executed as alleged by the plaintiff in the year 2016. He contended that the promissory note given to Gopal in the year 2006 was manipulated by the plaintiff, who filed the present suit. In paragraph 10 of the written statement, he pleaded to ascertain the age and signature of the ink and requested the

Court to take appropriate steps.



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8. However, the defendant now filed an application to send the suit promissory note to a forensic lab to ascertain the age of the ink. The learned trial Judge dismissed the application, holding that no such procedure could be followed by the forensic lab to ascertain the age of the ink. Such an observation without any basic material is erroneous. Whether the forensic lab adopts such a procedure or not can be decided only after a reply is received from the forensic lab. Therefore, the petition dismissed by the learned trial Judge is erroneous and is liable to be set aside. Even though there is a delay in the petition, to prove his defense, the defendant should be given an opportunity before the trial Court, otherwise, his valuable right to defend the case will be defeated. Therefore, this Court is inclined to allow the revision petition.

9. Accordingly, the findings rendered by the learned trial Judge are set aside. I.A.No.1 of 2022 in O.S.No.5318 of 2020 on the file of the Additional Sessions Court, Chennai, is hereby allowed. The trial Court is directed to appoint a commissioner to send the document/promissory note to a forensic lab to ascertain the age of the ink pertaining to the alleged signature of the plaintiff found in Ex.A1 – promissory note within a period of two weeks from the date of receipt of a copy of this order.

<https://www.mhc.tn.gov.in/judis> 10. Accordingly, this Civil Revision Petition is allowed. Consequently,



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the connected miscellaneous petition is closed. There shall be no order as to costs.

04.06.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

1. The XVII Additional Sessions Judge, Chennai.
2. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.
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