



C.R.P.No.436 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P. DHANABAL**

C.R.P.No.436 of 2022  
and  
C.M.P.No.2224 of 2022

M.Ranjith Kumar

... Petitioner

vs.

B.Ravikumar

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 16.09.2021 in I.A.No.1 of 2021 in O.S.No.3069 of 2014 on the file of the III Additional City Civil Court at Chennai.

For Petitioner : Mr.R.Asokan

For Respondent : Mr.J.Ram



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## **ORDER**

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This Civil Revision Petition has been filed by the petitioner, challenging the order, dated 16.09.2021 passed in I.A.No.1 of 2021 in O.S.No.3069 of 2014, by the III Additional City Civil Court at Chennai, wherein, the respondent herein has filed a petition before the Trial Court to reject Exhibit.B2-Receipt dated 29.12.2013. The said Interlocutory application was allowed by the Trial Court.

2. Aggrieved by the said order, the present Civil Revision Petition has been filed.

### **The brief facts of the case are as follows :**

3. This petitioner is the Defendant in the main suit and the respondent herein being the Plaintiff in the said suit has filed the said suit for the relief of recovery of money. While pending the said suit, P.W.1 was cross-examined. At the time of cross-examination of P.W.1 Ex.B2 was marked. Thereafter, the respondent herein has filed an application before the Trial court to reject the Ex.B.2, on the ground that the Ex.B.2 is the copy of receipt dated 29.12.2013, in fact, on the date of cross-examination, the learned counsel appearing for the



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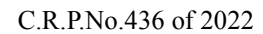
petitioner herein shown the electricity consumption charges receipt of the

Respondent and the same was marked, thereafter, the said document was taken out from the Court for stitching and at that time the document shown to the respondent was taken out and the present receipt for payment had been inserted and the original receipt shown to the respondent was replaced. This petitioner who is the respondent in the main petition filed a counter stating that on the date of cross-examination they only shown this payment of receipt and the same was admitted by the respondent and thereby the said document was marked and thereafter he put a question in respect of the electricity consumption charges receipt for that the respondent also admitted that the receipt is not under his custody. Further, the respondent has not taken any immediate steps, after came to know about the alleged replacement of the documents and they filed a petition before the Trial Court after transfer of the previous Presiding Officer and after taking charge of the present officer, they choose to file a petition after six months. Therefore, the document cannot be rejected.



4. Before the Trial Court, no oral or documentary evidence adduced on either side. The trial Court after hearing both side allowed the petition filed for rejection of Exhibit.B2.

5. The learned Counsel appearing for the petitioner would contend that this petitioner is the Defendant in the main suit and this respondent has filed a suit against this petitioner for the relief of recovery of money. The defence of the petitioner before the trial Court is that he already paid the entire amount and to that effect the respondent also issued receipt, at the time of cross-examination by showing the receipt, the petitioner counsel put a question to the P.W.1 and he also admitted and thereby the said document was marked as Exhibit.B2. Thereafter, on the side of respondent P.W.1 was further cross-examined and re-examined on 29.03.2021 after a period of more than one month from the previous date of cross-examination. The respondent has not filed any application immediately after the cross-examination and re-examination of P.W.1. Further, the P.W.1 was also cross-examined after the alleged replacement of Ex.B2, but not put question in respect of Ex.B2. Thereafter, they filed the present petition after six months. The respondent has not taken any steps before the Presiding Officer in whose presence the





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receipt only shown to the respondent. Therefore, the trial Court after elaborate discussion allowed the petition and rejected the document. Therefore, the order passed by the Trial Court is in order. The present Civil Revision Petition is liable to be dismissed.

7. This Court heard both sides and perused the records.

8. The main dispute between the parties is that the Exhibit.B2 was marked through cross-examination of P.W.1, at the time of cross-examination the petitioner's counsel had put a question in respect of electricity charges and thereby the P.W.1 admitted the said document and the same was marked. Thereafter, the said document i.e., the electricity receipt was said to be replaced by the present receipt of payment. This is the main dispute between the parties. The relevant portion of the cross-examination of P.W.1 on 16.02.2021 are extracted hereunder :

"24.11.2012 அன்று பிரதிவாதி ரூ.16,750 என்னிடம் கொடுத்தார் என்பதற்கு பிரதிவாதி எந்த ஆவணமும் எழுதிக்கொடுக்கவில்லை. தற்பொழுது என்னிடம் காண்பிக்கப்படும் ஆவணம் என் மனைவி மின்சார கட்டணத்திற்காக பிரதிவாதி கையெழுத்து வாங்கி சென்றது Ex.B2 ஆகும். என்னுடைய வழக்குரை பத்தி 18ல் என் மனைவி 27.11.2013ல் ஒரு ரசீது கொடுத்ததாக கூறியிருக்கின்றேன் என்றால் சரி தான். அந்த ரசீது என்னிடம் இல்லை."



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9. On careful perusal of the above said cross-examination reveals that the receipt shown to him is signature obtained from the wife of P.W.1 for electricity consumption charges, that was marked as Exhibit.B2. The next question is in respect of the receipt dated 27.11.2013 which was referred in Para.18 of the plaint. Therefore, it seems that there is some discontinuity in recording the evidence, because as per Para 18 of the plaint, the receipt dated 27.11.2013 was referred about the electricity bill for Rs.20,000/- According to the respondent, the counsels appearing for the defendant in the main suit have replaced the electricity receipt and inserted the receipt for payment of money. But it is admitted by the both parties that the said document was already marked before the trial Court in I.A. proceedings, thereafter, once again the document was marked before the trial Court in suit. Once the document is marked, the document is under the custody of the Court.

10. While so, it is not possible to take the documents out side the Court since the Court is the custodian of the document. In general, after marking the documents the court staff only would handle the documents and once the document is marked and thereafter no role to the Advocates to handle the



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documents. After marking the documents, the advocates cannot have any right or role to handle the documents. In order to prove that the documents marked have been taken out by the counsel and replaced the documents, there is no evidence and no any proof. But, at the same time the date of cross-examination and the marking of documents as Exhibit.B2 is 16.02.2021. Thereafter, the P.W.1 was further cross-examined on 29.03.2021 and on the same day after cross-examination the said P.W.1 was re-examined by disputing that the Exhibit.B2 document was not shown to the witness at the time of marking of documents and the signature found in Exhibit.B2 is not that of his wife. Therefore, there is no reference in the re-examination as about the replacement of the document in the manner in which the document was replaced. In the affidavit there are some allegations as against the counsels appeared for the defendant but there is no any reference in the re-examination as to who replaced the document and how the document was replaced. Even according to the plaintiff who is respondent herein, immediately after marking the document on that date itself they found that the document was replaced and same was brought to the knowledge of the Presiding Officer of the Court, but there is no any endorsement in the case papers to that regard. The allegation is serious, while so it is the duty of the Court to record the same in the case



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papers. Further the respondent/plaintiff also not even filed any memo to that regard. Per Contra, on the next date of hearing i.e., on 29.03.2021 allowed the P.W.1 for cross-examination and also P.W.1 was re-examined and no reference about the said matter of replacement.

11. Further, the respondent has not filed petition to reject the document immediately and there is no any reference about the complaint made before the Presiding Officer and the Presiding Officer also not recorded anything in the Court proceedings in respect of the serious allegations levelled against the counsels appearing for the defendants therein. The petition shows that it was drafted on 23.02.2021, but, the same was presented before the Court only on 26.07.2021. While respondent/plaintiff making serious allegation about the replacement of documents has not taken any steps immediately and thereafter he allowed for cross-examination and re-examination and thereafter filed the petition after long period of five months. The conduct of the respondent shows that the petition was filed only after thought. It is also admitted fact that Exhibit.B2 the receipt was already marked in the same Interlocutory Application proceedings. Since there is a dispute arose between the parties in respect of documents i.e., Exhibit.B2 and the same was marked by the Court,



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the Court cannot simply reject the document, since the document was under the custody of the Court even prior to mark as Exhibit. The trial Court has to conduct elaborate enquiry in respect of the marking of documents. The said document was also produced before the trial Court already in I.A. proceedings as early as on 03.11.2014 in I.A.No.15937 of 2014. Further, there is a Court seal found in the document for the year 2014 and the same document was also marked in the main suit.

12. Therefore, the Court cannot simply ignore the above said facts and the conduct of the respondent in taking steps to file the present petition to reject the document after five months that too after the transfer of previous Presiding Officer also to be taken into account to decide the petition. Further, at the time of re-examination also they have not stated anything about the allegations made in the present affidavit and thereby it is not appropriate to reject the document at this stage. It is for the Trial Court to decide at the time of passing of judgment whether the document has been proved in accordance with law or not. Mere marking of document itself will not amount to proof and further once the parties disputed the marking of document itself it has to be decided after elaborate evidence and thereby it needs elaborate trial.



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Therefore, at this stage the Court cannot simply reject the document. The trial Court only because there is an averment in the evidence of P.W.1 that the document is receipt given for the electricity consumption charges paid by the petitioner came to such conclusion. Even as per evidence of P.W.1, the said receipt is not for electricity bill but receipt given by wife of P.W.1 for payment of electricity bill by the petitioner and that document is no way relevant to this case.

13. Therefore, the trial Court failed to consider that while recording evidence something omitted that is the reason for this confusion and the respondent has not filed petition immediately before the Presiding Officer who recorded the evidence of P.W.1 and filed the petition after five months. Therefore, at this stage the trial Court cannot form any opinion as to how the receipt was included. Therefore, it is for the Trial Court to decide the same at the time of passing judgment after analyzing the entire evidence adduced by both the parties.



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14. Therefore, in view of the above discussion this Court is of the opinion that the order passed by the trial Court is unsustainable and the same is liable to be set aside. Accordingly, the Fair and Decreetal order dated 16.09.2021 in I.A.No.1 of 2021 in O.S.No.3069 of 2014 on the file of the III Additional City Civil Court at Chennai is set aside by allowing this Civil Revision Petition and I.A.No.1 of 2021 in O.S.No.3069 of 2014 is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

15.07.2024

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Index :Yes/No

Internet : Yes/No

Neutral Citation :Yes/No

To:

1.The III Additional City Civil Court,  
Chennai.

2.The Section Officer,  
V.R.Section,  
High Court of Madras.



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**P. DHANABAL, J.**

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