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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Twenty Fourth day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN
AND
The Hon`ble Mr.Justice MOHAMMED SHAFFIQ

C.M.P.(MD). No.2916 of 2022
in
A.S(MD) No.17 of 2016

Anbu Illam,
Rep by its Managing Director
Fr. B. Russel Raj,
Anbu Nagar Paramarthalingapuram
Vettoornimadam Post
Vadasery Village, Agasteeswaram Taluk
Kanyakumari District.

... Petitioner/ Appellant

Vs

John Bennet
M.P. Construction
M.S. Road Vettoornimadam Village
Vadasery Village Agasteeswaram Taluk
Kanyakumari District.

... Respondent/ Respondent

Prayer in C.M.P.(MD). No.2916 of 2022:- This Petition filed under Section 151 of C.P.C., to order for the Scientific / Handwriting Expert opinion from a Forensic Laboratory of the Tamil Nadu Government at Madurai to examine the disputed signatures with the admitted signatures of the Petitioner / Appellant in the Ex.A1

<https://www.mhc.tn.gov.in/judis>

Agreement dated 15.08.2008 marked in O.S. No. 194 of 2009 on the file of District



Judge Kanyakumari Division at Nagercoil and pass any further or other orders as this Honourable Court may deem fit and proper under the circumstances of the case and thus render justice.

Prayer A.S(MD) No.17 of 2016 :- This Appeal Suit is filed under Order 41 Rule 1 & 2 R/w Section 96 of the Code of Civil Procedure, against the decree and Judgment dated 22.12.2015 passed in O.S. No.130 of 2012 on the file of the District Judge, Kanniyakumari District at Nagercoil.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. T. Lajapthi Roy, Senior Counsel, Advocate for the Petitioner and of Mr. V.K. Vijayaraghavan, Advocate for the respondent, this Court made the following order:

(Order of the Court was made by P.VELMURUGAN,J)

The present petition has been filed by the Petitioner to order for the Scientific /Handwriting Expert Opinion from a Forensic Laboratory of the Tamil Nadu Government at Madurai to examine the disputed signatures with the admitted signatures of the Petitioner/Appellant in Ex.A1-Agreement, dated 15.08.2008 marked in O.S.No.194 of 2009, on the file of District Judge, Kanyakumari

Division at Nagercoil invoking Section 151 of the Code of Civil Procedure.



2.Mr.T.Lajapathi Roy, learned Senior counsel for the Petitioner would submit that the entire case is based on Ex.A1 Agreement and even from the inception, the said agreement was disputed. However, though the Petitioner invoked the provision under Section 45 r/w 73 of the Indian Evidence Act to send the disputed signature to compare with the admitted signature and the said petition was initially allowed and however, the respondent filed a revision before this Court and the same was dismissed. Since the respondent had already filed a petition to produce the original agreement, that was allowed by the trial Court and challenging the same revision was filed and the same was dismissed. From the inception, the document itself is denied and one of the defense taken by the Petitioner before the trial Court is that during the execution of Ex.A1 Agreement, the Petitioner was not in India, for which, he has also produced the passports and the entry made in the passport which shows otherwise and therefore, the very execution of the Agreement itself is denied. Further, he would draw the attention of this Court to the Agreement, wherein, the signature of the vendors differs page to page which also creates doubt Therefore in the interest of justice, the disputed Agreement has to be sent to Forensic Lab for examination by the Handwriting Expert and get the expert's opinion.

3.Mr.V.K.Vijayaraghavan, learned Senior Counsel for the respondent would submit that the Petitioner has already been given opportunity and he has filed application in I.A.No.152 of 2011 in O.S.No.194/09 before the Trial Court under



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Section 45 r/w Section 73 of Indian Evidence Act and the said application was allowed. Challenging the same, the respondent filed a revision before this Court in C.R.P.No.1519 of 2012 and this Court also dismissed the said revision petition and confirmed the order passed by the trial Court, by order, dated 12.2.20213. Despite both the Court permitted the Petitioner and has given opportunity to the Petitioner for sending the disputed signature with the admitted signature to get expert opinion, the Petitioner did not avail the opportunity before the trial Court. Therefore he is not entitled to invoke the provision under Order 41 Rule 27 of Civil Procedure Code. Order 41 Rule 27 comes only when the parties are not able to avail the opportunity before the trial Court, if those documents are necessary to render justice and after due diligence the Petitioner could not produce those evidence during trial due to inadvertent circumstances, which is not deliberate, they can invoke Order 41 Rule 27 of Civil Procedure Code, whereas, in the present case, the Petitioner has approached the trial Court and the trial Court has granted the relief as sought for by the Petitioner and the same was confirmed by this Court in the revision filed by the respondent, but the Petitioner did not avail the said opportunity. Once the Petitioner missed the opportunity, he cannot avail the said opportunity before this Court. The trial Court has again observed that despite giving opportunity, he has not availed the said opportunity and hence drawn adverse inference and he cannot once again seek the very same relief in this Petition to fill up the lacunae and therefore the application is liable to be dismissed.



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4. Heard the submissions made on either side and perused the materials placed before this Court.

5. Admittedly, the disputed document is an Agreement which was already marked before the trial Court as Ex.A1. The original itself is in dispute between the parties. According to the respondent, the original is with the Petitioner and the Petitioner has only given the xerox copy of the document Ex.A1. However, the trial Court considered the same and only prayed to send the photostat copy of the document in Ex.A1 with the admitted signature. No contemporaneous document which had the admitted signature has been filed. Further, a reading of the entire materials show that the suit is only based on Ex.A1 Agreement and despite opportunity given to the Petitioner before the trial Court, the Petitioner did not avail the said opportunity. Since the document containing the disputed signature is Ex.A1 which is already available and also from the very inception, signature itself is denied by the Petitioner, however, the Petitioner has invoked Section 151 of Civil Procedure Code and not order 41 Rule 27 of Civil Procedure Code.

6. Considering the facts and circumstance of the case and it is necessary for
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ends of justice, an opportunity can be given to the Petitioner to get the experts



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opinion regarding the disputed signature and for the said limited purpose, this Petition is allowed and the Petitioner is directed to produce the contemporaneous document which contain the admitted signature within a period of one week from the date of this order. Thereafter, on production of those documents, Registry is directed to produce Ex.A1 along with contemporaneous document would be produced by the Petitioner which is prior to the disputed document in the sealed cover and sent it to the Deputy Director, Regional Forensic Science Laboratory, Collector Office Road, Alwarpuram, Madurai by Mr.Ramanujam, Enl.No.3443/2019, Cell No.96777 79714, learned counsel has been appointed as Advocate Commissioner in this matter and the Registry is directed to hand over Ex.A1 and admitted contemporaneous document in the sealed cover. The learned Advocate Commissioner is directed to produce the same, to the expert for examining the document and after getting intimation from the expert, the Advocate Commissioner shall take back the above said documents along with expert's opinion in the sealed cover and hand it over to the Registry. All the above said exercise shall be completed within a period of 20 days from today. The remuneration for the Advocate Commissioner to undertake the above said process to the tune Rs.25,000/- shall be paid by the Petitioner



7. With the above directions, this Miscellaneous Petition is allowed. List the matter on 24.10.2024 for production of expert's opinion before this Court.

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Sd/-
Assistant Registrar(AD I)

/09/2024
Sub Assistant Registrar
(CS- I/ II / III / IV)

TO

1. The District Judge,
Kanniyakumari District at Nagercoil.

2. The Deputy Director,
Regional Forensic Science Laboratory,
Collector Office Road,
Alwarpuram, Madurai.

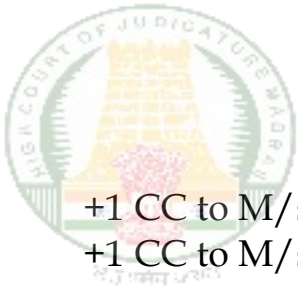
3. Mr. Ramanujam, Advocate
Enl. No. 3443/2019
No. 109, LAW CHAMBERS,
HIGH COURT BUILDINGS,
MADURAI.
(Cell No. 96777 79714).

Copy to:

1. The Registrar(Judicial),
Madurai Bench of Madras High Court, Madurai.

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

3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.



+1 CC to M/s.V.K.VIJAYARAGAVAN, Advocate (SR-11641[I] dated 24/09/2024)
+1 CC to M/s.S.RAJASEKAR, Advocate (SR-11701[I] dated 25/09/2024)

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ORDER DATED : 24/09/2024

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ORDER

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C.M.P.(MD). No.2916 of 2022

in

A.S(MD) No.17 of 2016

Giving direction and etc.

as stated within.

MGJ(27.09.2024) 8P 9C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023