



C.R.P. (MD) No. 1632 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 1632 of 2022

and

C.M.P. (MD) No. 7132 of 2022

N.Sathi

... Petitioner/

Appellant

-VS-

T.Murugan

... Respondent/

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in A.S.SR.No.6908 of 2018 dated 30.06.2021 on the file of the District Judge, Kanniyakumari at Nagercoil and allow this revision petition.

For Petitioner : Mr.M.Dennis Joe



WEB COPY



C.R.P. (MD) No. 1632 of 2022

ORDER

The Civil Revision petition is filed against the dismissal of I.A.No.1 of 2019 in A.S.SR.No.6908 of 2018. By an order dated 30.06.2024, it can be seen that the suit is one for recovery of money.

2. The case of the plaintiff is that the defendant borrowed a sum of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) and did not repay the said amount and as such, the suit was filed claiming the entire principal amount and also interest at the rate of 24% per annum in all totaling to Rs.2,19,140/- (Rupees Two Lakhs Nineteen Thousand One Hundred and Forty only) with further interest on the principal amount and for costs.

3. The suit was resisted by the defendant by stating that on 15.08.2011, in the presence of one Vishnu, Son of Ganapathi Pillai, the principal amount alone was discharged and in respect of the interest amount, the plaintiff agreed to give some time. During the trial, the said receipt was also marked as Ex.B1.

4. The Trial Court found that the defendant did not specifically make averments that the said Vishnu was the defendant's own brother and therefore,



C.R.P. (MD) No. 1632 of 2022

did not believe the said witness, who was examined as DW2. The Trial Court also found fault with the receipt by stating that the attesting witness should have signed the receipt and even in the pronote, no endorsement has been made and disbelieved the case of the defendant and decreed the suit in favor of the plaintiff. The appeal suit is not filed in time and is filed with a delay of 731 days.

5. The petitioner stated that she could not come in person to arrange an advocate to file the appeal within time. It is pleaded that she being a lady and since she suffered with illness due to jaundice, the delay has occurred. The counter-affidavit is filed to the application by the respondent/plaintiff. In fact, it is the specific case of the respondent/plaintiff that his signature in Ex.B1 was forged by the defendant. Considering the case of the parties, the Trial Court dismissed the application.

6. This Court takes note of the fact that when the plaintiff has pleaded that his signature in Ex.B1 is forged, no steps have been taken during the course of the trial to prove the said fact. This apart, specific defense has been taken and evidence has been let in by the defendant and therefore, when the suit for recovery of money is being defended on specific ground, this Court is of the



C.R.P. (MD) No. 1632 of 2022

view that one opportunity can be granted to the petitioner/defendant to contest the appeal on merits. However, even as per the case of the defendant, she paid only the principal and for the interest amount, the respondent/plaintiff gave some time.

7. In view thereof, interest of justice demand that while granting an opportunity to the petitioner/defendant to contest the appeal suit on merits, she be put on terms even though the respondent/plaintiff has not appeared before this Court even after service of notice. The fact is that the very many averments made in the Civil Revision Petition and the affidavit filed in support of thereof also has gone uncontroverted.

8. In view thereof, the Civil Revision Petition is allowed on the following terms:-

(i) The petitioner herein shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of O.S.No.306 of 2011 on the file of the Sub Court, Padmanabhapuram, on or before 31.07.2024. On such deposit, the Civil Revision Petition shall stand allowed and the order passed in I.A.No.1 of 2019 in A.S.SR.No.6908 of 2018 on the file of the learned District Judge, Kanyakumari at Nagercoil dated 30.06.2021 shall stand set aside and



C.R.P. (MD) No. 1632 of 2022

consequently, I.A.No.1 of 2019 will stand allowed.

WEB COPY

9. Call the matter on 01.08.2024 under the caption “for reporting compliance”.

10.07.2024

NCC : No

PKN

Note:- Issue order copy on 12.07.2024.



WEB COPY

To

1. The District Judge, Kanniyakumari at Nagercoil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



C.R.P. (MD) No. 1632 of 2022



WEB COPY



C.R.P. (MD) No. 1632 of 2022

D.BHARATHA CHAKRAVARTHY, J.

PKN

C.R.P. (MD) No. 1632 of 2022

10.07.2024