



C.R.P.(MD)Nos.1538 and 1589 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)Nos.1538 and 1589 of 2024

and

C.M.P.(MD)Nos.9046 and 9387 of 2024

C.R.P.(MD)No.1538 of 2024:-

Mohan ... Petitioner/Petitioner/Plaintiff

Vs.

R.Balathandayuthapani ... Respondent/Respondent/Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.2 of 2024 by order dated 02.04.2024 in O.S.No.334 of 2021 and allow the civil revision petition and directing the trial Court to reopen the case.

For Petitioner : Mr.K.P.Ramesh

For Respondent : Mr.M.Suresh

C.R.P.(MD)No.1589 of 2024:-

Mohan ... Petitioner/Petitioner/Plaintiff

Vs.

R.Balathandayuthapani ... Respondent/Respondent/Defendant



C.R.P.(MD)Nos.1538 and 1589 of 2024

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.1 of 2024 by order dated 02.04.2024 in O.S.No.334 of 2021 and allow the civil revision petition and directing the respondent to produce the documents.

For Petitioner : Mr.K.P.Ramesh

For Respondent : Mr.M.Suresh

* * *

COMMON ORDER

Heard both sides.

2.The plaintiff in O.S.No.334 of 2021 on the file of the III Additional Sub Court, Madurai is the petitioner in these civil revision petitions. The suit was filed for mandatory injunction directing the defendant to return the suit schedule jewellery or in the alternative pay a sum of Rs.5,50,368/- with interest.

3.The case of the revision petitioner is that the defendant is his customer and both are engaged in jewellery business. The plaintiff claims that the defendant purchased gold ornaments on credit basis and in acknowledgment of the debt, the defendant put his signature in a small note book. The plaintiff



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marked the said note book as Ex.A1. The defendant denied the signature attributed to him. In these circumstances, the plaintiff filed I.A.No.1 of 2024 and I.A.No.2 of 2024. I.A.No.1 of 2024 was filed directing the defendant to produce certain documents. I.A.No.2 of 2024 was filed for reopening the case. The Court below vide order dated 02.04.2024 dismissed both the I.As. Challenging the same, these civil revision petitions have been filed.

4.The prayer set out in I.A.No.1 of 2024 is quite vague. The defendant cannot be called upon to produce documents that are not in his possession. I, therefore, sustain the impugned order dismissing I.A.No.1 of 2024. C.R.P.(MD)No.1589 of 2024 is dismissed.

5.I, however find merit in the contention of the learned counsel for the revision petitioner there is need to obtain expert opinion. The case of the plaintiff is based on Ex.A1. The plaintiff in Paragraph No.5 of the plaint has made a specific averment that the defendant had put his signature in a small note book towards acknowledgment of his debt. I went through the contents of the written statement. Though the defendant had denied all the other allegations and averments of the plaintiff, there is no specific denial of this particular averment. However, the defendant has denied his signature attributed to him in



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Ex.A1, both in his proof affidavit as well as during cross examination.

Therefore, the plaintiff is obliged to prove that the signature attributed to the defendant in Ex.A.1 is actually that of the defendant. Instead of properly couching the I.A. prayer, it has been wrongly worded and that is why, I.A.No.1 of 2024 was dismissed by the Court and I also confirmed the same. But there is merit in the contention of the learned counsel for the revision petitioner that the case deserves to be reopened. The suit is of the year 2021. I am of the view that the plaintiff deserves to be given one more opportunity to secure expert opinion.

6.In this view of the matter and to grant one more opportunity to the plaintiff, the impugned order dismissing I.A.No.2 of 2024 is set aside and C.R.P.(MD)No.1538 of 2024 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The III Additional Sub Court,
Madurai.



WEB COPY



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G.R.SWAMINATHAN, J.

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