



C.R.P.(MD)Nos.1857 & 1858 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2024

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THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P.(MD)Nos.1857 & 1858 of 2023
and C.M.P.(MD).No.9305 of 2023

Saroja ... Petitioner/Petitioner/Plaintiff
in Both petitions

Sudha Vs.
... Respondent/Respondent/Defendant
in Both petitions

COMMON PRAYER : Civil Revision Petitions are filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 13.02.2023 in I.A.Nos.3 & 4 of 2022 in O.S.No.493 of 2018 on the file of the II Additional Sub Court, Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondents : No Appearance
(in both petitions)

COMMON ORDER

These civil revision petitions are filed challenging the order dated 13.03.2023 on the file of the learned II Additional Sub Judge, Nagercoil,



C.R.P.(MD)Nos.1857 & 1858 of 2023

in I.A.Nos.3 and 4 of 2022 in O.S.No.493 of 2018.

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2.The suit is filed for recovery of money based on a promissory note. The plaintiff's side evidence was over on 05.11.2022 and thereafter, the matter was posted for defendant's side evidence. Thereafter, DW1 was examined and when the matter was being listed for further examination of witnesses, on behalf of the defendant's side, the plaintiff filed these applications for reopening and recall of PW1 and to produce the documents to show his source of money under the suit pronote. The said applications are now rejected by the trial Court on the ground that when the source of money is not an issue at all, such applications are unnecessary.

3.Mr.M.P.Senthil, learned counsel appearing on behalf of the petitioner would submit that firstly, in this case the written statement in paragraph No.1, reads that the entire promissory note, is bogus one. Reading of the entire written statement shows that every aspect in the plaint is denied. It would be in the best interests of the plaintiff to prove the source of income also, apart from the production of promissory note



C.R.P.(MD)Nos.1857 & 1858 of 2023

and the presumption. He would further submit that when the defendant cross examined PW1, the counsel for the defendant had specifically questioned as to the source and suggested that the plaintiff's case as false. Therefore, the matter is very much in issue. Therefore, he would say that the recall petition be allowed.

4. When the suit is on the basis of a pronote and the plaintiff wants to let in evidence on the source of his income, even de hors the written statement or the evidence of the plaintiff, the same can be permitted to buttress the presumption and to corroborate the evidence already let in. The same cannot be seen as irrelevant or unnecessary. More so, in this case, the defendant even though had not taken a specific plea in the written statement, that the plaintiff did not have any source, but questioned PW1 on the source and has connected the same to the genuineness of the promissory note. In the facts and circumstances of the case, I am unable to sustain the reasons of the trial Court. Though plaintiff could have re-examined himself and his filing application only after defendant's side, the same can be compensated by awarding costs to the other side. Even after service of notice, the defendant is not



C.R.P.(MD)Nos.1857 & 1858 of 2023

appearing before this Court even through a counsel.

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5.In that view of the matter, this civil revision petition is allowed on the following terms.

(i) The order passed in I.A.Nos.3 and 4 of 2022 in O.S.No.493 of 2018 dated 13.02.2023, on the file of the learned II Additional Sub Judge, Nagercoil, is set aside and consequently, the above said interlocutory applications are allowed.

(ii) PW1 shall be present before the trial Court on the next hearing date subsequent the date of receipt of a copy of this order along with the documents. On the same day, further examination of PW1 shall be completed and PW1 can be cross-examined on any such date to be fixed by the trial Court;

No costs. Consequently, connected miscellaneous petition is closed.

01.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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C.R.P.(MD)Nos.1857 & 1858 of 2023

To

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- 1.The II Additional Sub Court, Nagercoil.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P.(MD)Nos.1857 & 1858 of 2023

D.BHARATHA CHAKRAVARTHY, J.

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C.R.P.(MD)Nos.1857 & 1858 of 2023

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