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CMP NO. 5167 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-07-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

CMP NO. 5167 of 2025 in

S.A.No.849 of 2017

T. Senthil Kumar, S/o. Thangamuthu, No.164A, Old
Bus Stand Road, Perundurai Taluk, Erode District.

Appellant(s)

Vs

M.P.A. Mahalingam, S/o. Muthusamygounder,
No.4/579, Sakthinagar, Vijayamangalam, Perundurai
Taluk, Erode District.

Respondent(s)

For Appellant(s):

GOKULAKRISHNAN

L. Sathiyaraj

N.Akilesh Raja

J.K. Prabhanchan

rejoinder affidavit filed by the petitioner

m/s gokulakrishnan

For Respondent(s):

c/v filed by m/s d.selvaraju

for sole respt (for appellant in sa)

Pvt. Notice



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Sole Respdt - Item Delivered On 2/05/2025

(vide Tracking Sheet Filed)

ORDER

This Miscellaneous Petition has been filed seeking to recall the judgment dated 12.12.2022 passed by this Court in S.A.No.849 of 2017.

2. This Petition has been filed by the respondent in the Second Appeal. The plaintiff in O.S.No.158 of 2010 before the Sub Court at Perundurai was the appellant in S.A.No.849 of 2017. The said suit had been filed seeking a direction against the defendant to pay a sum of Rs.8,15,200.00/- together with subsequent interest at the rate of 12% per annum for Rs.6,00,000/- from the date of the suit till the date of realisation. By judgment dated 24.07.2014, the suit was dismissed. Thereafter, the plaintiff had filed A.S.No.78 of 2014 which came up for consideration before the Principal District Court, Erode. By judgment dated 31.07.2017, the Appeal Suit was also dismissed confirming the judgment and decree of the Trial Court. The plaintiff then filed the aforementioned Second Appeal. The Second Appeal had been admitted on the following substantial questions of law :

"a) Whether the findings of the Courts below are correct in holding that the plaintiff have rebutted the presumption under Section 118 of the Negotiable Instruments Act, 1881 and the suit fails?

b) Whether the Courts below right in disbelieving the

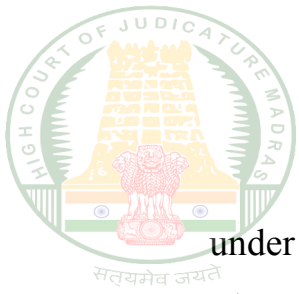


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evidence of P.W.2 and P.W.3, who are witnesses of Ex.A1 - suit promissory note as interested witness?"

3. When the Second Appeal came up for consideration before this Court, there was no appearance on behalf of the appellant and the respondent. However, the Court had noticed that there was a memo of compromise available in the Court records and accordingly, the Court had recorded the memo of compromise dated 08.01.2019 in entirety, since it contained the signature of the appellant and the respondent and also the learned counsels for the appellant and the respondent. A Civil Miscellaneous Petition had also been filed in CMP.No.9290 of 2017, seeking to record the compromise which was filed by the appellant. The compromise memo was recorded and the Second Appeal was allowed in terms of memo of compromise. It was also directed that the appellant was entitled to the refund of the Court fees. Thereafter, the present Petition has been filed by the respondent in the Second Appeal on the ground that the respondent had never entered into such a compromise and the respondent therefore insisted the Court to recall the order dated 12.12.2022.

4. Notice was directed in this Petition and a learned counsel had entered appearance on behalf of the respondent in this Miscellaneous Petition. It had been informed by both the learned counsels for the petitioner and the respondent that a complaint has been made about the filing of the Civil Miscellaneous Petition and presenting the memo of compromise before this Court before the Bar Council of Tamil Nadu and Puducherry



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under Section 30 of the Advocates Act, 1961. The proceedings are on going. Therefore, it would be extremely in appropriate on the part of this Court to express any opinion on the conduct of the parties. But at any rate, since the grievance had been expressed, it is prudent that the judgment dated 12.12.2022 should be recalled.

5. The learned counsel for the petitioner stated that Court should observe about the conduct in this order and also observe that fraud had been played on the Court. The Court is cautious, since the enquiry is pending before the Bar Council to refrain from using any such term. I would grant the larger relief of recalling the judgment dated 12.12.2022 and permitting arguments to be advanced in the Second Appeal.

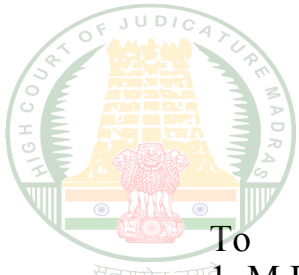
6. The learned counsel for the petitioner stated that owing to the grievance caused, some costs may be imposed. I would leave that issue to the wisdom of the Bar Council of Tamil Nadu and Puducherry to examine.

7. Accordingly, this Civil Miscellaneous Petition is allowed. The judgment dated 12.12.2022 made in S.A.No.849 of 2017 is recalled. The parties are permitted to advance fresh arguments in the Second Appeal.

8. The Second Appeal may be listed before the appropriate Court.

18.07.2025

gsk



To

1. M.P.A.Mahalingam
M.P.A. Mahalingam,
S/o. Muthusamygounder,
No.4/579, Sakthinagar,
Vijayamangalam,
Perundurai Taluk,
Erode District.



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C.V.KARTHIKEYAN, J.

gsk

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