



CRP(MD). No.2933 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 16.10.2025

Orders Pronounced on : 28.11.2025

CORAM

THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

CRP(MD). No.2933 of 2025

and

C.M.P(MD).No.16728 of 2025

V. Sundaresan

... Petitioner

Vs

A.Muthu,
S/o. Athiyapillai,

... Respondent

PRAYER :- Civil Revision Petition filed under Article 227 of The Constitution of India to set aside the Fair and Decreetal order dated 06.08.2025 made in IA No.4 of 2025 in OS No.194 of 2021 on the file of the Honourable Principal Subordinate Court, Srivilliputtur.

For Petitioner : Mr.S.I.Muthiah,
For Respondent : Mr.M.Thirunavukarasu

ORDER

This Civil Revision Petition has been filed to set aside the Fair and Decreetal order dated 06.08.2025 made in IA No.4 of 2025 in OS



CRP(MD). No.2933 of 2025

No.194 of 2021 on the file of the Principal Subordinate Court, Srivilliputtur.

2. The learned counsel for the petitioner submitted that the respondent herein had filed a suit in O.S.No.194 of 2021 on the file of the Principal Subordinate Court, Srivilliputtur, for recovery of money against the petitioner, based on a pro-note dated 02.12.2018. The petitioner had filed an application in I.A.No.4 of 2025 in O.S.No.194 of 2021 on the file of the Principal Sub Judge, Srivilliputtur, to order arrest of the witness, namely, Perumal, who had refused to receive the Court summons and the Court below had dismissed the same. Challenging the said order, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioner submitted that it is the specific case that the petitioner borrowed a sum of Rs.50,000/- from the respondent/plaintiff and executed a promissory note on 02.12.2018 and also would submit that the respondent/plaintiff has manipulated the promissory note that the loan amount is Rs.7,60,000/- and thereafter, the respondent/plaintiff had laid the suit and there is no consideration,



CRP(MD). No.2933 of 2025

passed under the suit Promissory Note to the value of Rs.7,60,000/-.

Even in the suit it is the claim of the respondent/plaintiff that the pro-note was written and filled by one Perumal. However, the respondent/plaintiff has not examined the said scribe as his witness to prove the execution of the pro-note. Hence, the petitioner had taken out an application in I.A.No.3 of 2025 under order 15 Rules 1 and 2 of C.P.C, in which notice was ordered to the witness and the same was returned with an endorsement “refused”. Hence an application has been filed seeking arrest of the said witness to secure his presence before the Court below and the same was dismissed by the Court below. He would further submit that it is necessary that the witness brought to the Court to let in evidence or otherwise the claim of the petitioner would not be substantiated.

4. Countering his arguments, the learned counsel appearing for the respondent would submit that even after the summons issued to the witnesses and if he fails to respond to the summons and only if there is any violation of any of the conditions in the summons, steps have to be taken for arrest of the witnesses. If he does not appear before the Court



CRP(MD). No.2933 of 2025

on receiving the summons, the contention is that the witnesses itself had not received the Court summons and therefore, the petition itself is liable to be dismissed. He would submit that the Court below rightly held that without examining the summoning officer, who had served the summons, effective steps cannot be taken to arrest the witnesses. Therefore, he would pray to dismiss the Civil Revision Petition.

5. I have considered the rival submissions and also perused the materials in the order impugned herein.

6. The Court below had held that the provision under order 16 Rule 10 envisages that if a witness fails to attend the Court below, on receipt of the summons, the Court shall examine the serving officer with verification affidavit with respect to the service of summon and examine him on oath that how he effected the service of summons and the Court shall ascertain the fact that whether the witness intentionally avoided the service without lawful excuse, then the Court can order proclamation for his appearance and thereafter, effective steps shall be taken by the Court, if the witness does not appear, after such effective steps only then warrant for the arrest would be issued.



CRP(MD). No.2933 of 2025

7. The Court below has also noted in the order that the summons issued to the witnesses were returned as not served, since the said witness was out of station and in a postal cover received by the Court below, there is an endorsement “refused”. The Court below had presumed that in normal circumstances there is a seal of the post office affixed and the tick mark been put in the relevant box for what purpose it was returned and there is no proper evidence that the witness has been willingly and intentionally refused to return the summons. It is further held that the petitioner had not examined the serving Officer, who served the summons to the witness and therefore, dismissed the application.

8. This Court after hearing the parties have directed the Registry to call for the records from the Court below and the records are also placed before this Court. From the records that has been placed before this Court it can be seen that the summons have been returned with an endorsement that the witness was not in place at the time of service and the time of return is also not known. In such endorsement, a witness had also signed, who is one of the sons of the witness sought to be



CRP(MD). No.2933 of 2025

summoned. The said endorsement had been made on 08.06.2025. The Court summons sent through registered post had been returned with an endorsement “refused”. It is hand written and such endorsement had been made by the postal Department on 06.06.2025.

9. The Court summons, admittedly served by the bailiff had been returned with an endorsement that the witness was not present at the time of service and that the persons present were not aware of the time when he returns. The witness to the said endorsement is the son of the witness. The registered post sent through the Court had been returned with an endorsement “refused”.

10. The Court below had given a finding there is no evidence on the returned summons that the witness had willingly or intentionally refused to receive the summons. It has been held by the Honourable Apex Court as well as by this Court that if an addressee of a letter refuses to receive the said letter, the same shall be deemed to have been duly served on the addressee.



CRP(MD). No.2933 of 2025

11. For the aforesaid reasons, it is evident that the witness is deliberately evading to receive the summons for his appearance before the Court below. Such conduct of the person who is sought to be summoned cannot be treated so lightly by the Court below. It is also to be further noted that the witness is a registered Document Writer, who would be well aware of the effect of summons that has been issued by the Court below.

12. With the above observations, the impugned order is set aside and the Civil Revision Stands allowed and an order of arrest of the witness is ordered, whose presence shall be ensured for the hearing to be fixed by the Court below. Consequently, connected miscellaneous petition is closed. No Costs.

28.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
tta

Note: ii) Registry is directed to return the original application filed along with this Civil Revision Petition to the petitioner.



WEB COPY



CRP(MD). No.2933 of 2025

TO

Principal Subordinate Court, Srivilliputtur.



WEB COPY



CRP(MD). No.2933 of 2025

K.KUMARESH BABU,J

TTA

**ORDER
IN
CRP(MD) No.2933 of 2025**

Date : 28/11/2025