



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 01.12.2025

Order pronounced on : 09.01.2026

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.1936 of 2024
& CMP.No.10232 of 2024

G.Madheshkumar

... Petitioner

Vs.

P.K.Velumani

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decretal order made in I.A.No.3 of 2023 in A.S.No.13 of 2023 dated 03.01.2024 on the file of the II Additional District Judge, Tiruchengode.

For Petitioner : Mr.A.K.Sriram
Senior Counsel for Mr.V.Balamurugane

For Respondent : Mr.N.Manoharan



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ORDER

The appellant, who was the defendant in the suit for recovery of money, having failed in his attempt to seek comparison of the disputed signature in a cheque, with his admitted signature in another cheque, has come by way of this revision.

2.I have heard Mr.A.K.Sriram, learned Senior Counsel for Mr.V.Balamurugane, learned counsel for the petitioner and Mr.N.Manoharan, learned counsel for the respondent.

3.Mr.A.K.Sriram, learned Senior Counsel would submit that the suit was filed based on a cheque issued by the defendant, in favour of the plaintiff. Taking me through the pleadings, learned Senior Counsel would contend that the defendant had categorically denied the borrowing from the plaintiff and had asserted that the cheque issued for insurance plans/premium was misused and based on the same, the suit claim has been fabricated. He would further submit that before the First Appellate Court, an application was taken out to have the disputed signature of the appellant compared with the admitted signature in another cheque and inviting my



attention to the dates of the two cheques, the learned Senior Counsel would submit that the question of documents not being contemporaneous also does not arise, since the cheques were issued within a few months apart, the admitted cheque is dated 20.11.2013 and the disputed cheque is dated 04.10.2013. The learned Senior Counsel would therefore state that absolutely no prejudice would be caused to the respondent/plaintiff, if the comparison of the disputed signature is made by an expert, as requested by the revision petitioner.

4. The learned Senior Counsel would also state that the First Appellate Court has not understood the case of the revision petitioner and has erroneously held that since the revision petitioner has admitted the signature in the cheque dated 20.11.2013, there was no necessity for the revision petitioner to seek comparison, failing to understand that if the disputed cheque is compared and it is found that the signature is not that of the revision petitioner, then it goes to the root of the suit claim itself, since the cheque dated 20.11.2013, according to the plaintiff, is a cheque issued towards repayment of the borrowing alone and the dispute regarding the cheque dated 04.10.2013 would throw light on the question of borrowing



5.The learned Senior Counsel would further submit that the cheque dated 04.10.2013 was, according to the revision petitioner, issued by the respondent/plaintiff as an open cheque and the respondent himself had presented the same, by forging the signature of the revision petitioner on the reverse side of the said cheque and taken the money from his account. It is only in these circumstances that the application for comparison was taken out and therefore, the learned Senior Counsel prays for the revision being allowed, setting aside the order passed by the First Appellate Court.

6.Per contra, Mr.N.Manoharan, learned counsel appearing for the respondent would submit that the petitioner has admitted the signature in the cheque dated 20.11.2013 and the suit claim is based only on the said cheque. In this regard, he would invite my attention to the judgment of the trial Court, which has discussed the relevant admissions of the revision petitioner in cross examination. He would also state that the initial burden, which was on the respondent's shoulder has been discharged and thereafter, it was for the revision petitioner to adduce satisfactory evidence to establish that the



cheque was not supported by consideration and consequently, the respondent was not entitled to maintain the suit claim. With regard to burden of proof, the learned counsel for the respondent has relied on the decision of the Hon'ble Supreme Court in *Thiruvengadam Pillai Vs. Navaneethammal and another*, reported in (2008) 4 SCC 530.

7.Mr.N.Manoharan, learned Senior Counsel would further state that the petitioner never chose to take out the application to compare the disputed signature in the cheque dated 04.10.2013, pending the suit and there are absolutely no reasons assigned as to why the application has been taken out belatedly, pending the First Appeal. It is also the argument of Mr.N.Manoharan that by seeking an expert opinion with regard to the disputed signature in the cheque dated 04.10.2013, the revision petitioner is virtually attempting to lead additional evidence in the appeal, which would require the fulfillment of the mandate of Order XLI Rule 27 of CPC. Relying on the decision of this Court in *CRP.No.3486 of 2024* in the case of *Kandasamy and others Vs. K.Ramachandran and another*, learned counsel for the respondent would submit that it is not permissible for the petitioner to seek adducing additional evidence, without an application being taken out



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under Order XLI Rule 27 of CPC.

8.The learned counsel for the respondent would also invite my attention to the memorandum of grounds of First Appeal, where also, the petitioner admits the issuance of cheque dated 20.11.2013 and would draw my attention to ground No.10 specifically, where also, the case of the petitioner is clearly spelt out. He would therefore state that the order of the First Appellate Court, dismissing the application for an expert opinion does not call for interference in revision.

9.I have carefully considered the submissions advanced by the learned Senior Counsel for the petitioner and the learned counsel for the respondent. I have also gone through the records and the decisions on which reliance is placed on by the learned counsel for the respondent.

10.The plaintiff filed the suit for recovery of a sum of Rs.8,48,000/-, together with subsequent interest and costs. The cause of action for the suit is that the defendant borrowed Rs.8 lakhs from the plaintiff on 04.10.2013 and towards repayment, the petitioner had issued a post dated cheque dated



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20.11.2013. It is the case of the revision petitioner that the petitioner is not liable to pay any monies, since there was no borrowing in the first place. The version of the revision petitioner is that on 04.10.2013, the respondent/plaintiff issued an open cheque for Rs.8 lakhs and forging the signature of the revision petitioner on the reverse side of the cheque, the respondent has withdrawn the money himself and therefore, there is no cause for filing the suit in the first place. The parties went to trial and after leading oral and documentary evidence, the trial Court decreed the suit. Challenging the judgment and decree of the trial Court, the revision petitioner has filed A.S.No.13 of 2023. In the pending First Appeal, the petitioner took out I.A.No.3 of 2023 under Rule 75 of the Civil Rules of Practice to send for the original cheque dated 04.10.2013 from the Bank to have it compared by the expert, with his admitted signature in the cheque dated 20.11.2013. The application was resisted by the respondent and the First Appellate Court dismissed the application.

11.It is the contention of Mr.A.K.Sriram, learned Senior Counsel that the First Appellate Court has misconstrued the request of the revision petitioner, which was only to attack the original alleged borrowing of Rs.8



lakhs. According to the learned Senior Counsel, if the original borrowing is disproved, then the case of the plaintiff that the cheque dated 20.11.2013 was issued towards repayment of the alleged borrowing would consequently fall to the ground.

12.As already seen, even in the written statement, the defendant has denied his signature in the cheque dated 04.10.2013. However, he has admitted his signature in the cheque dated 20.11.2013, which is the foundation on which the suit has been instituted. During trial, the defendant has admitted to the cheque dated 20.11.2013. In fact, even at the stage of exchange of pre-suit notices, the defendant had requested for copy of the cheque, in respect of which, the claim is made by the respondent and the same was also furnished even before the filing of the suit itself. In such circumstances, when the plaintiff had come to Court with a specific case that payment of money is due under the cheque dated 20.11.2013 and the petitioner has also taken a specific defence that he has not borrowed any money from the respondent/plaintiff and that after inspecting the xerox copy of the alleged cheque dated 20.11.2013, he has found that the signature and recitals in the said cheque are not him and therefore, the alleged cheque is



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forged and fabricated.

13. Thus, it is seen that before the trial Court, the defendant had even disputed the genuineness of the cheque dated 20.11.2013. In such circumstances, when the plaintiff was able to extract admissions in his favour that the said cheque dated 20.11.2013 was only issued by the revision petitioner, then the burden of proof would stand automatically shifted to the shoulder of the defendant.

14. The Hon'ble Supreme Court, in *Thiruvengadam Pillai's case*, cited supra, held that when an unregistered document is put forth by the plaintiff, the plaintiff will have to prove the document first and as the defendant cannot be called upon to prove the negative. However, in the present case, the plaintiff has been able to successfully discharge the initial burden upon the plaintiff with regard to the cheque dated 20.11.2013.

15. As already discussed, though the defendant has denied even the genuineness of the cheque dated 20.11.2013. However, in cross examination, the plaintiff has been able to secure an admission that the said cheque dated 20.11.2013 was, in fact, only issued by the petitioner. In such



circumstances, the burden of proof stood shifted to the defendant to establish that the document was forged or fabricated as pleaded in the written statement. Having taken such a plea in the written statement, the defendant ought to have taken out necessary application even before the trial Court. No steps have been taken by the defendant to have the signature of the defendant compared as that has been attempted before the First Appellate Court. It is only in this context that the learned counsel for the respondent has stated that the application is also belated and on this ground as well, it is liable to be dismissed. I find force in the said submissions of Mr.N.Manoharan, learned counsel for the respondent.

16.Coming to the argument of Mr.N.Manoharan that the very request for comparison would amount to letting in additional evidence and therefore, without filing an application under Order XLI Rule 27 of CPC, the application for sending for the cheque dated 04.10.2013 being not maintainable, he has relied on the decision of this Court in *Kandasamy's case*, cited supra. That was a case where pending an appeal, challenging a decree for recovery of possession, the defendant sought for appointment of a fresh Advocate Commissioner. In that backdrop, this Court held that an



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application under Order XXVI Rule 9 of CPC for appointment of an Advocate Commissioner before the First Appellate Court not being accompanied by a petition under Order XLI Rule 27 of CPC is also not maintainable. This Court non-suited the appellant on the ground that the application for appointment of an Advocate Commissioner was not accompanied by a petition under Order XLI Rule 27 of CPC.

17. In reply, meeting the argument of Mr. N. Manoharan with regard to the applicability of Order XLI Rule 27 of CPC, Mr. A. K. Sriram, learned Senior Counsel would contend that the revision petitioner was only seeking to summon the records from the bank for the purposes of having a comparison made and that without a finding on this issue after getting a report from the expert, the First Appellate Court cannot decide the main appeal and in such circumstances, it is his argument that it was not necessary to invoke Order XLI Rule 27 of CPC and request of the petitioner would not strictly fall within the parameters of additional evidence being adduced before the Appellate Court.

18. Be that as it may, the petitioner having specifically denied his



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signature even in the cheque dated 20.11.2013 and consciously went to trial and having not taken out any application for comparison of the admitted signature in the cheque dated 20.11.2013, with the disputed signature on the reverse side of the cheque dated 04.10.2013 before the trial Court, after suffering a decree, pending the First Appeal, the attempt has been made. No doubt, even assuming if the request for sending for the original cheque from the Bank may not strictly amount to additional evidence, even otherwise, when the petitioner has consciously waived his right to seek such comparison, pending trial of the suit, he cannot be permitted to fill up the lacuna, after having suffered a decree before the trial Court.

19. In fact, even in the memorandum of grounds of appeal, as rightly pointed by Mr. N. Manoharan, the revision petitioner does not challenge the signature in the cheque dated 20.11.2013 and ground No.10 of the memorandum of grounds of appeal raises a ground that the case of the appellant was that the impugned cheque was issued in the year 2009-2010 for payment of insurance premium to the respondent, who admittedly was an insurance agent of the appellant/defendant. In such circumstances, when the suit claim is based on the said cheque dated 20.11.2013 and the revision



petitioner has categorically admitted not only during trial, but also in the grounds of appeal in the pending First Appeal, though having initially disputed even the genuineness of this cheque, and there being absolutely no ground raised with regard to the cheque dated 04.10.2013, I do not see how the petitioner is entitled to seek for comparison of the disputed signature on the reverse side of the cheque dated 04.10.2013, with the admitted signature in the cheque dated 20.11.2013.

20. There is also no plea in the written statement that the plaintiff had misused an open cheque dated 04.10.2013 by forging the signature of the petitioner on the reverse side of the said cheque and that the plaintiff himself has withdrawn the money. Such a ground is also not taken in the grounds of First Appeal. Therefore, in such circumstances, the revision petitioner is only attempting to plead a totally new case, in the application filed seeking to have the signatures compared in the cheques dated 04.10.2013 and 20.11.2013. In the light of the above, I do not see any merit in the revision. The order of the First Appellate Court, dismissing the application filed by the revision petitioner does not call for any interference in the revision.



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21.In fine, the Civil Revision Petition is dismissed. No costs.

Connected Civil Miscellaneous Petition is closed.

09.01.2026

Neutral Citation: Yes/No

Speaking Order/Non-speaking Order

Index : Yes / No

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To

The II Additional District Judge, Tiruchengode.



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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.1936 of 2024
& CMP.No.10232 of 2024



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