
(1996) 10 MAD CK 0017
In the Madras High Court

Sri Rajaji Bharath Kumar represented by Partner APPELLANT
Vs
K. Muralidhar RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, 151
Evidence Act, 1872 — Section 45, 47

Citation : (1997) 1 MLJ 89

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Judgement

N. Arumugham, J.—On ordering notice of motion, I have had an occasion of hearing the Bar for the respective parties, even while the

revision was sought to be admitted against the impugned order passed by the learned VII Assistant Judge, City Civil Court, Madras in O.A. No.

7716of 1996 in O.S. No. 124 of 1985 dated 3.7.1996 allowing a petition filed u/s 151 of the CPC to subject two documents viz., letters dated

18.10.1983 and 17.7.1984, claimed to have been written by the first defendant in favour of the plaintiff, to the examination of the hand-writing

expert for the reasoning that they are being disputed with regard to their contents, challenging the propriety and legality of the impugned order.

2. The petitioner herein filed the suit for the recovery of the balance due on the hire purchase agreement from the defendants and it is being resisted

by the defendants by filing a detailed written statement. When the suit was about to be posted in the list for trial and when P.W. 1, plaintiff's side

witness was about to get into the witness box, it appeals, a petition under Order 13, Rule 2 of the CPC was filed to condone the delay of filing two

documents viz., letters dated 18.10.1983 and 17.7.1984 said to have been

written by the first defendant/respondent herein. Learned trial Judge, after hearing the objections from the other side, has condoned the delay in filing of the same and has thus, received the same to be marked in evidence as the documents filed on behalf of the plaintiff, After this, the plaintiff as P.W. 1 or his witness is yet to come to the witness box for giving oral evidence. It was; at this stage, the first defendant viz., the respondent herein, after having come to know the contents, of the same, filed a petition u/s 151 of the CPC seeking a direction from the Court below to send the said two letters for the examination of the hand-writing expert, as the contents of the same, according to the first defendant, do not belong to him. While stating so, it was contended by the first defendant that the revision petitioner had taken the signature of the respondent in several papers and the two letters were amongst the same which were subsequently used for creating the letters by inserting the contents of recent origin. Though the petition was resisted by the revision petitioner/plaintiff, learned trial Judge accepted the prayer of the respondent and allowed the petition on depositing some amount for sending the letters for the examination of the hand-writing expert by passing the impugned order. It is, this order which is being challenged in this revision pending admission as aforementioned.

3. While briefing the facts of the case, it was contended by the bar for the petitioner that passing of the impugned order by the Court below is unwarranted, especially under the circumstances that the recording of the evidence by the trial Judge is yet to commence, and under such circumstances, if the petition is allowed the right of proof to be offered by him through evidence, pursuant to the impugned order, would become highly prejudiced and therefore, the chance of giving a conflicting version is too imminent in this case and so, the impugned order is sought to be challenged by admitting this revision. Pointing out the question of law also, Mr. Shah, learned Counsel for the petitioner persuaded me to admit this revision and thereby to intervene in the impugned order passed by the trial Judge. Contra to the same, Mr. Venkataseshan, learned Counsel contended that the mere contents of the disputed letters are disowned by the respondent and they have not been referred to in the pleadings and for the first time, they have been allowed to be on record by filing a petition

under Order 13, Rule 2 of the CPC and getting the delay condoned

and so, the respondent/first defendant is being denied an opportunity of putting forth his defence and therefore, he justified the impugned order in

that respect.

4. In the context of above rival position, I have perused the impugned order and the only question that arises for consideration, at this stage, is

whether the impugned order has become vitiated with any illegality or impropriety?

5. The very facts that the revision petition has filed the suit for recovery of the balance due on a hire purchase agreement pertaining to the vehicle in

the custody of the first defendant/respondent, and that is being resisted by the respondent by filing a de tailed written statement and the suit after

settling triable issues, ripe for trial and stands posted in the list for the commencement of trial and the trial is yet to commence by recording

evidence of the witnesses of plaintiff, are not in controversy or dispute among the parties herein. It is also not in dispute that before commencement

of trial and recording or oral evidence, a petition under Order 13, Rule 2 of the CPC was filed seeking condonation of delay in filing two letters

dated 18.10.1983 and 17.7.1984 said to have been written by the respondent/first defendant and allowed, but, however, the letters are yet to be

marked during evidence for want of proper proof and custody. It is also not in dispute that at this stage, a petition u/s 151 of the CPC was filed

seeking the disputed two letters above referred to, to be sent for the examination of the handwriting expert. It is thus noted that with regard to the

said two letters, the contents seeking proof and custody as provided by the Indian Evidence Act are to be proved by giving proper legal evidence

and for that, it has to be marked through P.W. 1 or any other witnesses of the plaintiff. However, upon doing so, P.W. 1 or the witness of the

plaintiff who speaks to the proof of such documents has to be necessarily cross-examined by the respondent/first defendant and only after the

cross-examination the defence would be projected and the trial court has to consider or to arrive at an opinion with regard to the contents or the

genuineness of the construction of the said documents and not otherwise. Therefore, it has become imperative for the trial court to form an opinion

whether such letters required a further proof or opinion from any handwriting

expert or otherwise presumably on the basis of the evidence rendered on behalf of the person who filed them and the person who controverts and challenges the same, that is possible only during the course of chief-examination and cross-examination. If we understand the meaning of Sections 45 and 47 of the Indian Evidence Act, the above circumstances have been clearly pointed out and found referred to in the Evidence Act and the procedural law also envisages the said position. The impugned order passed by the learned trial Judge does not at all warrant any of the circumstances or material aspects to be considered. It is therefore, under such circumstances, to say otherwise, either in favour of the plaintiff or the defendants, it is not proper and opportune time to pass the impugned order directing to send the two documents for the examination of the hand writing expert at the cost of any party. To this extent, I would like to clarify that the sending the documents at this stage for the opinion of the hand writing expert is too premature and it is not an opportune time for that and that therefore, the impugned order lacks every brevity of law and legal sanctity and accordingly, it is liable to be set aside. My observation of this does not prevent either of the parties to the proceedings to prove their documents in accordance with law either by direct evidence or by seeking expert's opinion as provided by the law at a later stage, subject to the circumstances pointed out by Sections 45 and 47 of the Evidence Act.

6. In the result, for all the foregoing reasonings, the revision is admitted and accordingly, it is allowed. Consequently, the impugned order passed by the learned trial Judge in I.A. No. 7716 of 1996 in O.S. No. 124 of 1985 dated 3.7.1996 is hereby set aside. There will be no order as to costs under the circumstances for either of the parties.