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**(2010) 10 MAD CK 0260**

**Madras High Court (Madurai Bench)**

**Case No:** C.R.P. (PD) (MD) No. 359 of 2009 and M.P. (MD) No. 2 of 2009

Thirunavukkarasu

APPELLANT

Vs

Rajendran

RESPONDENT

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**Date of Decision:** Oct. 29, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151

**Hon'ble Judges:** R. Banumathi, J

**Bench:** Single Bench

**Advocate:** Seetha, for K. Govindarajan, for the Appellant; T.V. Sivakumar, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

R. Banumathi, J.

Challenge in this Revision is the order of First Additional District Munsif, Kumbakonam dated 30.6.2008 in I.A. No. 9 of 2008 in O.S. No. 615 of 2006 filed under Rule 76 and Section 151 Code of Civil Procedure, declined to send for the documents from the office of Public Works Department, Cauvery Division, Kumbakonam.

2. The Respondent/Plaintiff filed the suit in O.S. No. 615 of 2006 on the file of the First Additional District Munsif, Kumbakonam for recovery of money on the basis of promissory note, stating that the Defendant has borrowed a sum of Rs. 50,000/- by executing a promissory note on 14.3.2004 agreeing to repay the sum with interest @ 12% p.a. The Defendant has resisted the suit by a filing written statement denying the execution of the promissory note. In the written statement, the Defendant has raised a plea of forgery and contended that the Defendant's signature in the promissory note was fabricated.

3. After framing of issues, PW.1 was examined and when PW.1 was in the box, the Defendant filed the petition in I.A. No. 9 of 1998 under Civil Rules of Practice 76 to

send for certain documents from the Public Works Department (Cauvery Division), Kumbakonam such as (i) Payment Register for the month of February 2004 where the Defendant put his signature for payment; (ii) Leave Application of the Defendant dated 14.9.2004, from the office of the Public Works Department, Cauvery Division, Kumbakonam in which he is working. According to the Defendant, these documents which are in the custody of the Public Works Department are required for comparison of his signature found in the promissory note.

4. Learned First Additional District Munsif held that there are no valid reasons to send for the documents for cross-examination of PW.1 for comparing the signature with the pronote and pointing out that those documents are not necessary, dismissed the said application.

5. Challenging the impugned order, the learned Counsel appearing for the revision Petitioner has submitted that the learned District Munsif has not passed a detailed order but in one line stated that "there are no valid reasons to send for the documents". It was further submitted that the learned District Munsif erred in saying that the documents are not necessary for cross-examination of PW.1 and the Trial Court ought to have sent for the documents in the light of the defence plea of forgery taken in the written statement.

6. Drawing the Court's attention to Civil Rules of Practice 75(2), the learned Counsel appearing for the Respondent/Plaintiff submitted that the application ought to have been filed in the prescribed format and a verified application under CRP 75(2) ought to have been filed and as such, the application was not maintainable. It was further submitted that the Defendant cannot seek to send for documents to confront PW.1/Plaintiff with reference to the Defendant's documents.

7. The application to send for the documents has been filed by the Defendant under Rule 76 of Civil Rules of Practice. As rightly pointed out by the learned Counsel for the Respondent/Plaintiff, the application ought to have been filed under CRP 75(2). CRP 75 deals with the production of records in the custody of a public officer other than a court. For issuance of summons for the production of the records in the custody of Public Officer, an application as contemplated under Rule 75(2) has to be filed. CRP 75(2) reads as follows:

75. Production of records in the custody of a public officer other than a court-

(1). ...

(2) Every application for such summons shall be made by a verified petition stating that (i) the document or documents the production of which is required; (ii) the relevancy of the document or documents; and (iii) in cases where the production of a certified copy would answer the purpose whether application was made to the proper officer for a certified copy of copies and the result of such application.

8. As per 75(3) CRP, no Court, shall issue such summons unless it considers the production of the original is necessary or is satisfied that the application for a Certified Copy has been duly made and has not been granted. Before issuing summons, in every case, the Court shall record its reasons in writing for issuance of summons. As contended by the learned Counsel for the Respondent, the application filed before the District Munsif in I.A. No. 9 of 2008 is not in the prescribed format as stipulated under CRP 75(2). In the absence of verified application being filed, the learned District Munsif rightly dismissed the application.

9. Of course, the Defendant has taken a plea of forgery. In order to substantiate the plea of forgery, the Defendant can very well produce every documents which are in his custody containing his signature. It need not necessarily be the documents from the Public Works Department where he has been working. That apart, to substantiate his plea of forgery, Defendant can also adduce other oral and documentary evidence. Since there are other efficacious ways to establish the defence plea of forgery, the learned District Munsif, rightly dismissed the application.

10. As rightly contended by the learned Counsel for the Revision Petitioner, the learned District Munsif has not elaborated the reasoning for dismissal of the application but omission to give elaborate reasoning cannot be the ground for interference with the order of the learned District Munsif. The impugned order does not suffer from any serious error calling for any interference.

11. In the result, the order dated 30.6.2008 made in I.A. No. 9 of 2008 in O.S. No. 615 of 2006 on the file of the First Additional District Munsif, Kumbakonam is confirmed and the Civil Revision Petition is dismissed. The learned District Munsif is directed to proceed with the suit in O.S. No. 615 of 2006 and dispose of the same as expeditiously as possible after affording sufficient opportunity to both the parties. No order as to costs. Connected Miscellaneous Petition is closed.