

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU DISTRICT.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Wednesday the 26th day of March 2025

I.A.No.2/2023

in

O.S.No.5/2021

G.Arumugam

. . . Petitioner / Defendant.

/Vs/

D.Sampath

. . . Respondent / Plaintiff.

This petition came up before me in this court for final hearing on 19.3.2025 in the presence of Tvl.N.K.Sankaranarayanan and R.Sivachandran, Advocates for the petitioner, and Tvl.R.Narayanasamy and K.Elumalai, Advocates for the respondent, upon hearing the arguments of respondent's counsel, perusing the written arguments of petitioner and entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed by the petitioner under Order 26 Rule 10-A CPC r/w Section 45 of Evidence Act, to appoint an Advocate Commissionr for sending the Ex.A1 Promissory Note date 5.2.2017 for comparison of the alleged signature of the defendant available in the

instrument with the admitted signatures subscribed in Ex.B6 sale deed dated 9.4.2014 in document No.2388/2014 executed by G.Arumugam on behalf of S.Selvam in favour of D.Arujunan (plaintiff's brother) to the Government Forensic Lab for getting expert opinion.

2. The case of the petitioner in brief :

The plaintiff has conveniently suppressed his earlier Legal Notice dated 13.02.2019 issued by him through his Advocate to me and for which the petitioner issued a suitable Reply Notice dated 02.03.2019 to the plaintiff. Even though the plaintiff has suppressed the above said facts in his plaint pleadings, at the time of cross examination he has admitted the same and those documents were marked as Exhibits B1 and B2 on his own admission. The plaintiff has issued the above said earlier Notice dated 13.02.2019 to the petitioner under Section 138 negotiable instruments Act by claiming an amount of Rs.30,00,000/- based on a Cheque number 678, dated 05.01.2019, Account number 805620110000040, Bank of India, Madipakkam Branch which was deposited by the plaintiff in his Account Number 1614135000003570, KVB Bank, Madipakkam Branch and the same was returned as "Insufficient Funds". The above said Cheque was pertaining to the period prior to five years and even the account in which that cheque was issued by the Bankers to me was also became dormant as it was not used by the petitioner for years together. The petitioner is a builder

by profession and the above said Cheque in question was obtained in the name of his Proprietorship viz., "Nithila Constructions". The plaintiff's brother one Mr. Arjunan, S/o Mr. Dhanakotti purchased a Flat from the petitioner in the year of 2014 and since then the plaintiff had close acquaintance with the petitioner and in view of the same the plaintiff was permitted to have free access to petitioner's office. In between, in the year of 2015 the petitioner met with an accident and shifted his place of residence to the present rented address. The petitioner maintained a small place in his residence itself as Office and kept all his signed blank cheques, stamp papers and other documents. The above said Cheque which was issued by Banker 5 years back also was there as the petitioner stopped his construction business and also left the account as inoperative the petitioner never noticed the missing of cheques, stamp papers and other documents. Only after seeing the above Notice dated 13.02.2019 issued by the plaintiff, the petitioner understand that the plaintiff taking advantage of the permission to have free access into petitioner's residence and office maintained at that time had taken come cheques and other documents which were kept in blank by signing for petitioner's business use; which stolen, presented by the plaintiff. The petitioner had no transactions with the plaintiff in any manner at any point of time. The above said Cheque in question was not issued to the plaintiff; but taken by the plaintiff stealthily

from petitioner's residence when the petitioner met with accident in which circumstances he availed help of the plaintiff to shift his place of dwelling. The above said Cheque was not entrusted to the plaintiff in the manner as alleged by the plaintiff in his Notice; but taken by the plaintiff using otherwise method and moreover there is no liability on petitioner's part to settle any amount to the plaintiff. Having kept silent on some days, the plaintiff has issued another Notice dated 08.11.2019 by claiming a sum of Rs.20,00,000/- along with interest based on another instrument by suppressing earlier Notice issued by him and Reply Notice issued by the petitioner. The petitioner issued a Reply Notice dated 24.12.2019 to the plaintiff. The petitioner was under impression that the plaintiff had once again misused another document of Promissory note which was already stolen by him along with the cheque which he has presented earlier. The petitioner applied and obtained certified copies of the Promissory Note - Exhibit A1 from this Hon'ble Court for Verification. On verification the petitioner found that the plaintiff has fabricated the promissory note as if the petitioner has signed. The signatures available in the Exhibit A1 - Promissory note have not been subscribed by the petitioner. The plaintiff has fabricated the above said instrument by forging petitioner's signatures. Hence, the petition.

3. The averments of counter filed by the respondent in brief :

The Petitioner / defendant filed the vexatious written statement and to delay to proceedings he filed the present petition for expert opinion. Further, there is no averment in the written statement filed by the petitioner / defendant that he has not signed in Exhibit A-1 and in the present petition; he has categorically stated that both the cheque and promissory note "I signed in blank cheque and blank promissory note and other documents and the same were kept in my office. At my point of time, the petitioner has not stated that he denied his signature on the cheque, promote, and other documents. Once, the petitioner has not denied the signature anywhere in his affidavit or the written statement filed by him that he has no locus standi to file the present petition before this Hon'ble Court for expert opinion. On this solid ground, the petition is liable to be dismissed in limine. The respondent evidence was closed on 05.07.2023 and posted for petitioner / defendant side evidence. On 09.08.2023 the petitioner filed to receive additional documents and the same was allowed on 23.08.2023 subject to proof and relevancy. On 13.09.2023 the DW1 got into the witness box, marked Ex.B3 to Ex.B10, and posted to cross - examination of DW - 1 by 16.10.2023. on 06.10.2023, the petitioner sought time and adjourned to 18.10.2023, and on 18.10.2023, he filed the present petition. For expert opinion before the commencement of Trial or

prior thereto, but, after the closure of the evidence on the plaintiff's side and as such the application is liable to be dismissed.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This petition is filed by the defendant under Order 26 Rule 10-A CPC. The suit is filed for recovery of money based on promissory note. The suit is at the stage of DW1 cross. The petitioner / defendant states the plaintiff issued a notice dated 13.2.2019 under the provision of 138 NI Act claiming a sum of Rs.30,00,000/- under the cheque allegedly issued by the defendant on 5.1.2019. The petitioner further states the plaintiff / respondent deposited the said cheque, thereafter it was returned insufficient funds. The account of the petitioner / defendant alleged to be dormant. The petitioner / defendant states he was a builder by profession, the cheque was in the name of "Nithila Construction". The petitioner / defendant further states the plaintiff / respondent's brother one Arjunan purchased property from him since the plaintiff had close acquaintance with petitioner / defendant he permitted to access to the office.

6. The petitioner further states he met with an accident in the year 2015 and shifted his residence. He states that he set up his office in his residence in a small place at his residence where he kept signed blank

cheques, stamp papers. The petitioner / defendant further states he never noticed the missing of cheques, stamp papers and other documents. Only on seeing notice dated 13.2.2019 he came to know the plaintiff took advantage of the permission to have free access to his residence had taken away the cheques and other documents kept blank but signed by him, which were alleged to be stolen by the plaintiff.

7. The petitioner / defendant states that he had no transaction with the plaintiff nor the cheque was entrusted to him in a manner alleged by the plaintiff. It is stated there is no liability on his part. The petitioner / defendant states the plaintiff issued notice originally on 18.11.2019 claiming a sum of Rs.20 lakhs. Thereafter another notice was issued for which reply was issued dated 24.12.2019. The petitioner / defendant alleges the plaintiff misused the cheques and promissory notes which was stolen by him.

8. Therefore this petition is filed for appointment of an Advocate Commissioner to send the document under Ex.A1 promissory note to compare with the admitted signature under document under Ex.B6 the sale deed dated 19.4.2014.

9. In the counter, it is objected the contention of having stolen the instrument. The respondent / plaintiff alleges no such plea was taken by the petitioner / defendant in the written statement or in his proof affidavit. It is

alleged only to delay the claim of the plaintiff the petitioner / defendant has taken the contention in the present application. The suit is pending for cross examination of DW1 from 6.10.2023. The petition to compare the signature by an expert after the petitioner / defendant entered into the witness box is belated and cannot be entertained as it will cause severe prejudice to the plaintiff. The signatures can be compared by the court itself. The court has ample powers to compare the signatures. If really the petitioner / defendant aggrieved by the promissory note under Ex.A1, he could have taken steps for comparison by an expert at the earliest point of time.

10. The acquaintance of the petitioner / defendant with the plaintiff is not denied. Further according to the petitioner / defendant the cheque and the promissory note was stolen by the plaintiff. But no police complaint was lodged by him so far. No prudent man would keep quiet in such a situation. The averments in the petition that he came to know about the cheque and the promissory note only on issuance of notice dated 8.11.2019, but no acceptable reason for not having taken legal action immediately. There is no whisper about the date when the earlier notice prior to 8.11.2019 was issued by the plaintiff.

11. The petitioner / defendant contended no liability on his part to make payment. The specific claim is the instrument is not supported by any consideration. But these facts could be agitated by oral evidence and by

subjecting himself for cross examination of the witnesses. This application is filed only to protract the suit and to avoid reaching finality. The petitioner / defendant avoids himself from cross examination. This application is vexatious, entitled for exemplary cost.

12. In the written arguments of the plaintiff cited a judgment in CRP 2121/2016 of Supreme Court wherein it is held as follows,

"It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting / signature with the admitted handwriting/ signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting / signature for comparison to an expert merely because the time gap between the admitted handwriting / signature and the disputed handwriting / signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings / signatures with admitted handwritings / signatures, separated by a time lag of 2 to 3 years,

would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting / signature and the admitted handwriting / signature and the admitted handwriting / signature are capable of comparison for a viable expert opinion."

"When there are no signatures of comparable and assured standard on the material record before the trial Court, it is unsafe to obtain the signatures of the defendant in open court and send the said signatures and also his vakalat and written statement to an expert for obtaining his opinion after comparison of the signatures thereon with the disputed signatures on the suit promissory note, as any such opinion obtained from a handwriting expert on such material is not going to be of any help to the trial Court in effectively adjudicating the lis more particularly in the light of the admitted legal position

that expert's opinion evidence as to handwriting or signatures can rarely, if ever, take the place of substantive evidence."

13. Therefore relying upon the above judgment it is clear there is no compulsion on the court always to sent for comparison. Further the document under Ex.A1 dated 5.2.2017 and the document under Ex.B6 dated 9.4.2014, both the documents are not of the same period to have the result precisely. Therefore for the reasons stated in the above discussions no merits in this application, petition liable to be dismissed,.

14. **As the result, petition dismissed with cost.**

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 26th day of March 2025.

Principal District Judge,
Chengalpattu.

Both side witnesses and exhibits :
Nil.

Principal District Judge,
Chengalpattu.