

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present :Tmt. P.R. Supraja, M.L.,
II Additional District & Sessions Judge,
Thanjavur.**

**Wednesday the 3rd day of October 2024
(Thiruvalluvar Aandu 2055- Purattasi Matham 16th day)**

I.A. No.17/2024 and I.A.No.62/2024 and I.A. 63/2024 in O.S. No.37/2021

Kannadhasan

.....Petitioner/Plaintiff

/Vs/

Gnanasekaran

.....Respondent/Defendant

These petitions having come up for final hearing before me on **25.09.2024** in the presence of Thiru.**T.Kamaraj**, Advocate for the Petitioner in both petitions and of **Thiru.K.Paneerselvam**, Advocate for the respondent in both petitions and upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

COMMON ORDER

I.A. No. 17/2024

(1) This petition has been filed by the petitioner/plaintiff under sec. 151 of CPC to reopen the case for recall the plaintiff's evidence to mark the CD and Pendrive is filed.

Gist of the Affidavit is as follows:

(2) The petitioner is the plaintiff in the original suit. The case was posted for the chief examination on 10.08.2022 and on that day itself Ex.A1 to Ex.A7

marked. Thereafter the case was adjourned for arguments. To prove on the petitioner side that there was a telephonic conversation between the plaintiff and the defendant wherein defendant admits the obtaining of loan, the petitioner seeks to produce the CD and Pendrive which are very essential to this case and it will be relevant to decide the issue. Hence, the petition to reopen plaintiff side evidence and mark the CD and Pendrive is filed. Hence, this petition may be allowed.

Crux of Counter filed by the respondent:

(3) The petition is not maintainable and filed belatedly by the petitioner and should be dismissed in limine. The petitioner has not provided any proof at the time of trial. Now the petition to receive that CD, Pendrive and a certificate which is not genuine is filed only to drag on the proceedings. Hence this petition is to be dismissed.

I.A. No. 62/2024

(4) This petition has been filed by the petitioner/plaintiff under or.18 rule 17 r/w. 151 of CPC to recall the plaintiff's evidence to mark the CD and Pendrive is filed.

Gist of the Affidavit is as follows:

(5) The petitioner is the plaintiff in the original suit. The case was posted for the chief examination on 10.08.2022 and on that day itself Ex.A1 to Ex.A7 marked. Thereafter the case was adjourned for arguments. To prove on the petitioner side that there was a telephonic conversation between the

plaintiff and the defendant wherein defendant admits the obtaining of loan, the petitioner seeks to produce the CD and Pendrive which are very essential to this case and it will be relevant to decide the issue. Hence, the petition to reopen plaintiff side evidence and mark the CD and Pendrive is filed. Hence, this petition may be allowed.

Crux of Counter filed by the respondent:

(6) The petition is not maintainable and filed belatedly by the petitioner and should be dismissed in limine. The petitioner has not provided any proof at the time of trial. Now the petition to receive that CD, Pendrive and a certificate which is not genuine is filed only to drag on the proceedings. Hence this petition is to be dismissed.

I.A. No. 63/2024

(7) This petition has been filed by the petitioner/plaintiff under or.7 rule 14(2) r/w. 151 of CPC to mark the CD and Pendrive is filed.

Gist of the Affidavit is as follows:

(8) The petitioner is the plaintiff in the original suit. The case was posted for the chief examination on 10.08.2022 and on that day itself Ex.A1 to Ex.A7 marked. Thereafter the case was adjourned for arguments. To prove on the petitioner side that there was a telephonic conversation between the plaintiff and the defendant wherein defendant admits the obtaining of loan, the petitioner seeks to produce the CD and Pendrive which are very essential to this case and it will be relevant to decide the issue. Hence, the

petition to reopen plaintiff side evidence and mark the CD and Pendrive is filed. Hence, this petition may be allowed.

Crux of Counter filed by the respondent:

(9)The petition is not maintainable and filed belatedly by the petitioner and should be dismissed inlimine. The petitioner has not provided any proof at the time of trial. Now the petition to receive that CD, Pendrive and a certificate which is not genuine is filed only to drag on the proceedings. Hence this petition is to be dismissed.

(10) Point for consideration:

Whether these petitions are to be allowed or not?

Point:

(11) The learned counsel for the petitioner would submit that the petitioner is the plaintiff in the suit. The suit is filed for recovery of money on the basis of pronote. In the instant case, evidence was completed on both sides and the case was posted for argument. Now only the plaintiff had informed the counsel that there was a telephonic conversation between the plaintiff and the defendant wherein defendant admits the obtaining of loan. The learned counsel would submit that the CD and Pendrive will be relevant to decide the issue. Hence, the petition to reopen plaintiff side evidence recall plaintiff and mark the CD and Pendrive is filed.

(12) Per contra, the learned counsel for the defendant would submit that the petition is filed belatedly. He would submit that caller information has not been provided by the petitioner to show that the call was made from plaintiff's

number to defendant's number. He would strongly oppose the petition.

(13) I have carefully considered the rival submissions and perused the materials on record. The present suit is filed for recovery of money based on pronote. The defendant has contended that he has not obtained loan from the plaintiff and also denied the execution of the pronote. In the case at hand plaintiff had let in evidence on his side. The defendant has also let in evidence on his side. Both sides were cross examined and after closing of evidence the case was posted for arguments. At this juncture, the present petition to reopen, recall plaintiff's evidence to mark the CD and Pendrive is filed. According to the plaintiff the CD is recorded telephonic message between the plaintiff and the defendant which would prove that the defendant had admitted the loan. In the instant case, on perusal of the affidavit filed in support of the petition, it is seen that the plaintiff has failed to state the date when the alleged conversation took place. Further, the defendant had been cross examined by the plaintiff and subsequent to the same this petition is filed. It is not stated in the affidavit where the conversation took place prior to or after the cross examination of the defendant.

(14) Moreover, Certificate u/s.65B of Indian Evidence Act was produced along with the CD and Pendrive and would it state that the Certificate was issued for the print out and other digital documents. On perusal of records it is seen that no such print out was filed by the plaintiff regarding the recorded message alleged to be contained in the CD. The plaintiff has also failed to

state the phone numbers between whom the alleged conversation had taken place. The plaintiff also did not play the CD before the court enabling the court to verify whether the conversation is relevant by comparing the same with the print out of recorded message. Therefore the plaintiff/petitioner failed to prove the relevancy of the document by either playing it in the court or producing the print out for the same. He has also failed to mention the period when the conversation took place that is whether prior to filing of the suit or pending suit and also failed to mention the mobile numbers between whom the conversation is alleged to have taken place. After the closure of both sides evidence and after cross examination of the defendant when the case is posted for arguments, the present petition is filed belatedly without assigning any plausible reasons for the same. Since it has not been established that the alleged documents is relevant to decide the case on merits and the affidavit is bereft of reasons for the delay, I am of the considered opinion that the petition is devoid of merits and liable to be dismissed.

IA.17/2024

In the resut, this petition is dismissed. No costs.

IA.62/2024

In the resut, this petition is dismissed. No costs.

IA.63/2024

In the resut, this petition is dismissed. No costs.

Dictated to the Steno-Typist, transcribed by her in computer, corrected and pronounced by me in the open court, this the **3rd day of October 2024.**

**II Additional District & Sessions Judge,
Thanjavur.**

**Petitioner and Respondents side
Exhibits and Witnesses : Nil**

**II Additional District & Sessions Judge,
Thanjavur.**

Order

IA.17/2024 in O.S.No.37/2021

Dated: 03.10.2024