APHC010034722026

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY, THE 19th DAY OF AUGUST 2026

PRESENT

THE HONOURABLE SRI JUSTICE D RAMESH

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

CIVIL REVISION PETITION NO: 318 OF 2026

Between:

1. M/S SAI RESOURCES PRIVATE LIMITED, Represented by its Managing Director Mr. TarunKantiGhosh H.No. 368, SilsilaChowk, Dimna Road, Mango, Jamshedpur PIN 831012 Jharkhand

...Petitioner

AND

1. M/S ASPIRE TECHNO ENGINEERS, Represented by its Proprietor P. Aravind Kumar, S/o. P. Gurumurthy Aged about 42 years, D.No. 31-29-11, Govind Road, Allipuram, Visakhapatnam PIN 530004, Andhra Pradesh

...Respondent

Counsel for the Petitioner: V.N.V.SURYA DATTU

Counsel for the Respondent: JAVVAJI SARATH CHANDRA

The Court made the following:

THE HONOURABLE SRI JUSTICE D.RAMESH
AND
THE HONOURABLE SRI JUSTICE A.HARI HARANADHA SARMA

CIVIL REVISION PETITION No.318 OF 2026

ORDER: (*Per* Hon'ble Sri Justice D.Ramesh*)*

This revision is filed aggrieved by the order dated 05.12.2025 passed in I.A.No.206 of 2025 in C.O.S.No.5 of 2024 by the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam.

2. Heard learned counsel for the petitioner and learned counsel for the respondent.

3. The petitioner is defendant in C.O.S.No.5 of 2024. I.A.No.206 of 2025 in C.O.S.No.5 of 2024 is filed by the petitioner to receive the Memorandum of Agreement dated 16.09.2016 as secondary evidence with regard to mark the same as exhibit on behalf of the petitioner. After an elaborate discussion, the trial Court has rejected the said application with the following observations:

> "32. The petitioner sought to receive certified copy of memorandum of agreement dated 16.09.2016 as secondary evidence. Admittedly, what was marked before the learned Judicial Magistrate trying the case filed under

Negotiable Instruments Act in C.C.No.1298 of 2019 was a copy of Memorandum of Agreement dated 16.09.2016.

33. A perusal of said document shows that the parties purportedly agreed to payment of money as per the terms stated therein. The said document is unstamped document and inadmissible in evidence in view of the bar created by Section 35 of the Indian Stamp Act.

35. Further, in ***H.Siddiqui vs. A.Ramalingam***, (2011) 4 SCC 240, the Hon'ble Supreme Court of India was pleased to hold that where original documents are not produced without a plausible reason and factual foundation for laying secondary evidence is not established, it is not permissible for the Court to allow the party to adduce secondary evidence.

36. In the present case, petitioner except merely stating that original is with respondent did not show that such a document was in fact executed by parties. When the existence of document itself is not proved, secondary evidence of same cannot be received, as the foundational facts about the existence of document are not proved. Further, mere marking of a copy of document before another Court does not make it admissible. The document cannot be received as a secondary evidence. The point is answered accordingly against the petitioner."

4. Learned counsel appearing on behalf of the petitioner vehemently contended that the trial Court ought not to have rejected the application at the threshold and the memorandum of agreement dated 16.09.2016 is sought to be received only as secondary evidence and if the same is marked, the petitioner is also impound the said document by paying the requisite stamp duty. But, surprisingly, the trial Court has rejected the application stating that original is with the respondent and did not show that such a document was in fact executed by the parties. When the existence of document itself is not proved, secondary evidence of same cannot be received. The said finding is contrary to the record.

5. Originally, the suit in O.S.No.222 of 2019 was filed by the respondent/plaintiff before the II Additional District Judge, Visakhapatnam. During the course of inspection of the records and registers of the Court by the inspection team of the High Court of Andhra Pradesh, the inspection team members pointed out that since the pleadings attract the provisions of the Commercial Courts Act, the suit is liable to be returned for filing before the Commercial Court and wherein the counsel for plaintiff fairly conceded that the plaintiff and defendant entered into

Memorandum of Understanding dated 16.09.2016 and based on the clauses of the said document and consent of the plaintiff with regard to existence of Memorandum of Understanding dated 16.09.2016, the matter has been referred to the Commercial Court and the same was numbered as C.O.S.No.5 of 2024. In the said circumstances, the findings recorded in paragraph No.36 of the impugned order is contrary to the record. Therefore, this Court is of the opinion that by taking into consideration the facts recorded by the learned II Additional District Judge, Visakhapatnam, in the judgment dated 20.02.2024, the impugned order is liable to be set aside.

6. Accordingly, the Civil Revision Petition is allowed setting aside the order dated 05.12.2025 passed in I.A.No.206 of 2025 in C.O.S.No.5 of 2024 by the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam. The trial Court may receive the Memorandum of Agreement dated 16.09.2016 as secondary evidence, subject to the petitioner satisfying all the requisite requirements. With regard to the other aspects raised by the learned counsel for the respondent/plaintiff, liberty is granted to raise all other objections after the document is marked. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE D.RAMESH

JUSTICE A.HARI HARANADHA SARMA

Date: 19.08.2026
Ivd

Whether the order is:

Speaking	Yes	Reasoned	No
Reportable	No	Non-reportable	Yes

THE HONOURABLE SRI JUSTICE D.RAMESH
AND
THE HONOURABLE SRI JUSTICE A.HARI HARANADHA SARMA

CIVIL REVISION PETITION No.318 OF 2026

Dated: 19.08.2026

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