

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION NO.4157 of 2015

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ORDER:

This civil revision petition is filed challenging the order dated 07.08.2015 passed in I.A.No.640 of 2014 in O.S.No.52 of 2012 by the Principal District and Sessions Judge, Nalgonda District, allowing the I.A filed under Order 18 Rule 17 r/w Section 151 CPC to recall PW.1 for filing of the statement of accounts of State Bank of India dated 01.10.2012.

The petitioner is the defendant in the suit. The respondent herein filed the above suit for recovery of money. During the course of trial, the respondent himself was examined as PW.1 and the suit was posted for his further evidence. Since the respondent could not file the statement of account from the State Bank of India pertaining to the suit transaction as the said document was not available with him as on the date of his giving evidence, he filed the above I.A seeking to recall his evidence for receiving the said document.

The petitioner/defendant filed counter stating that as per the pleadings of the plaint there was no mention about the statement of account and that the respondent/plaintiff is trying to fill up the procedural lacunae by recalling PW.1 and prayed to dismiss the application.

Learned District and Sessions Judge observed that the proposed statement of account is a document, which obviously will not allow any fabrication or manipulation, even if desired, and no prejudice would be caused to the petitioner/defendant if the respondent/plaintiff is allowed to mark the said document in evidence. Moreover, the petitioner/defendant will have ample opportunity of cross-examining PW.1 on the said document, and accordingly allowed the I.A.

Aggrieved by the same, the petitioner/defendant filed the present revision petition.

Heard learned counsel for the petitioner/defendant and Sri A. Vishnuvardhan Reddy learned counsel appearing for respondent/plaintiff.

Learned counsel for the petitioner submits that the I.A has been filed by the respondent herein to cover up the lacunae in the evidence of PW.1. The learned counsel also submits that after completion of his cross-examination of PW.1 the petitioner came up with the present application seeking to mark the impugned statement of account issued by the State Bank of India dated 01.10.2012. He further contended that as the statement of account itself is dated 01.10.2012 nothing prevented the respondent to file the same along with the suit.

On the other hand, learned counsel for appearing for the respondent while supporting the order under revision would submit that the statement was not available with the respondent as on the date when he was examined as PW.1. He would also submit that the said statement of account is crucial for the purpose of deciding the issue in the suit, especially to support the case of the respondent to show that the respondent herein had means to lend money to the petitioner herein. He would further submit that the evidence was just commenced and immediately after closure of cross-examination of PW.1 the present application is filed.

I have considered the rival submissions and perused the order impugned in this revision petition. The learned District Judge while allowing the I.A had observed that since the document is statement of account issued by the Bank there would be no possibility of fabrication or manipulation of the same. The learned Judge also accepted the argument that the said document probably was not available with the respondent/plaintiff,

Though the learned District Judge observed as above, the objection raised by the petitioner/defendant that there was no pleading with regard to the said document, is not sustainable for the reason that the evidence need not be pleaded either in the plaint or in the affidavit in support of the interlocutory application. However, the fact remains that if PW.1 is recalled to give further evidence, it would virtually be providing an opportunity to the respondent/plaintiff to open the entire evidence, and hence the objection of the petitioner cannot be said to be without any basis.

In that view of the matter, it is made clear that except in relation to marking of

statement of account dated 01.10.2012 respondent/plaintiff would not be allowed to lead any other evidence. It is also made clear that after cross-examination on the issue in relation to the bank-statement and closure of PW.1's evidence, the respondent/plaintiff shall have the right of further evidence, if any.

Subject to the above observation, the civil revision petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

9th September, 2015

Js.

Note: issue C.C. one week

(B/o) Js.