

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.952 of 2015

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ORDER:
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This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.24-10-2014 in I.A.No.94 of 2014 in O.S.No.49 of 2011 of the IV Additional District Judge at Mahabubnagar.

2. The petitioner herein is plaintiff in the above suit. He filed the suit against respondent for recovery of money on the basis of a promissory note.

3. A written statement was filed by respondent/defendant denying the suit claim.

4. Issues were framed. Trial was commenced. The affidavit in lieu of chief-examination of petitioner was filed on 08-04-2012. He was cross-examined on 18-07-2012. During the course of cross-examination of petitioner, a document styled as "Hamipatram" allegedly executed on 02-09-2010 by petitioner was sought to be confronted to him. The petitioner denied its execution. Thereafter the respondent was also examined and his evidence was concluded on

17-09-2013. The case was posted to 25-09-2013 for arguments. It was then adjourned 8 times by the Court below and ultimately posted to 30-12-2013 for pronouncement of judgment. On that day, it was reopened and posted to 20-01-2014 for hearing of arguments again. Thereafter it was adjourned to 03-02-2014, 21-02-2014 and 05-03-2014. On 05-03-2014 it was again posted to 14-03-2014 for pronouncement of judgment.

5. At that stage, on 07-04-2014, the respondent filed an application under Section 151 CPC to reopen the suit to enable him to take steps and to fulfill conditions for adducing secondary evidence to prove the “Hamipatram” dt.02-09-2010.

6. In the affidavit filed in support of this application, it was contended that the original of “Hamipatram” is in the custody of petitioner; that respondent possesses a photocopy of it; and under misconception that he cannot produce and prove photocopy of a original document and only original would be received in evidence, he was not allowed to file it when he was adducing evidence. He contended that after taking expert advice and second opinion, he intended to mark the said document by taking necessary steps as contemplated under the Evidence

Act, 1872, and no prejudice will be caused to petitioner because of this.

7. Counter affidavit was filed opposing this application. The petitioner denied the execution of the said "Hamipatram" and pointed out that number of times, the matter was adjourned even after it was posted for arguments and for pronouncement of judgment. It was also contended that photocopy of the said document was not allowed to be marked by respondent during his evidence. Therefore, the application be dismissed.

8. By cryptic order dt.24-10-2014 without assigning any reason, the Court below allowed the said I.A. It observed :

"In view of the facts, and circumstances, the Petition filed by petitioner/defendant, to re-open the case to take steps for accusing secondary evidence is hereby allowed as prayed for."

9. Challenging the same, this Revision is filed.

10. The learned counsel for petitioner contends that the order passed by the Court below is bereft of reasons; that the document which is sought to be now marked in evidence had been confronted to petitioner during his cross-examination and he denied its execution; that it was

sought to be marked by respondent in his evidence, but the respondent was not allowed to mark it because it was only a photocopy; and in spite of the fact that the case was posted for arguments on 25-09-2013, it was repeatedly adjourned by the Court below for a period of 6 months, and then the suit was reopened by the impugned order, and this indicates that the Court below had not acted in a *bona fide* manner.

11. The learned counsel for respondent, on the other hand, refuted the above contentions and supported the order passed by the Court below.

12. There is no dispute that the document in question is a photocopy of "Hamipatram" dt.02-09-2010. This document was sought to be confronted to the petitioner when he was in the witness box, but he denied its execution. The respondent tried to mark it in his evidence, but this was not permitted by the Court below. It is understandable as to how in the light of these events after posting the case for arguments on 17-09-2013, the Court below repeatedly adjourned the matter without deciding the suit. It is even more shocking that even after taking adjournments for 6 months, the respondent chose to file I.A.No.94 of 2014 to reopen the suit, and by an unreasoned order the Court below allowed it.

13. This Court strongly deprecates the action of the Court below in not deciding the suit for a period of 6 months after the evidence is closed and for repeatedly adjourning the matter without any valid reason. It also does not approve the conduct of the Court below in reopening the suit, 6 months after the evidence was closed and arguments heard and reserving it for judgment, to enable the respondent to mark the photocopy of the said document. I am of the opinion that the impugned order is unsustainable.

14. Therefore, the Civil Revision Petition is allowed and the impugned order dt.24-10-2014 in I.A.No.94 of 2014 in O.S.No.49 of 2011 is set aside. The Court below shall dispose of the suit expeditiously, after hearing arguments of both sides, preferably within a period of four months from the date of receipt of a copy of this order. No costs.

15. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-06-2015

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