

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.R.P. No. 1148 OF 2015

ORDER:

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The Civil Revision Petition is filed by the petitioner against the order dated 19.01.2015 passed in I.A No.144 of 2014 in O.S No.4 of 2012 on the file of the Senior Civil Judge, Nizamabad.

2. Heard both the counsel.

3. A perusal of the order, passed on 28.01.2014 in I.A.No.808 of 2012 in O.S. No.4 of 2012, at para No.3, would show that the contest of the respondent is that he never executed any pro-note and never took back the alleged pro-note (original) and never issued the so called suit cheque and the alleged xerox copy of the pro-note is fabricated by pasting the signature of the defendant on a paper, while taking Photostat copy of the said document.

4. No doubt, the observation at para No.6 of the Order is beyond the scope of the purview of the contest of the respondent. As and when the respondent disputes the very existence of pro-note and its execution much less taking of original by retaining any xerox copy by plaintiff, the question of production of original pro-note or notice to produce either under Order XII Rule 8 of C.P.C or even under Order XI Rule 14 of C.P.C much less with reference to Section 66 of Evidence Act does not arise.

5. Having regard to the above, there is nothing to interfere though the conclusions of the lower Court are otherwise untenable for no direction to the defendant to produce the alleged document from his contest that could arise but for with the observation that when the defendant contest that such pro note was never in

existence much less to retain the xerox copy by the plaintiff and returned original to defendant to produce, if at all the plaintiff is able to establish, he can rely on the so called Xerox copy for marking subject to objection and ultimately to decide its admissibility or not within the purview of Section 65 and 66 of Evidence Act as secondary evidence as per the settled expression of Apex Court in ***Bipin Shantilal Panchal v. State of Gujarat.***

6. Accordingly, with that observation, the Civil Revision Petition is dismissed at the stage of admission. No costs.

7. Miscellaneous petitions, pending if any, in these Revisions shall stand closed.

B.SIVA SANKARA RAO,J

Date:17.04.2015

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