

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.Nos.5391 and 5311 of 2011

COMMON ORDER :

Since these two Revisions arise out of the same suit and between the same parties, they are being disposed of by this common order.

2. Petitioner herein is the plaintiff in O.S.No.88 of 2004 on the file of I Additional Chief Judge, City Civil Court, Secunderabad. The said suit was filed for recovery of money under Order XXXVII CPC.

3. Leave to defend was granted to the respondents unconditionally.

4. It is the specific case of the petitioner/plaintiff that the 1st respondent/1st defendant failed to pay amount for the purchases made by it in July, 2003; that the amount for the said purchases were paid after the credit period to M/s.Gowra Petro Chem Pvt. Ltd.; after several reminders and negotiations by respondents 2 and 3 representing 1st respondent, petitioner agreed to receive a sum of Rs.9.33,916/- towards full and final settlement of the amount due by the 1st respondent, since respondents 2 and 3 gave personal guarantee for payment of the amount; that 1st respondent issued two cheques bearing No.888341 and 888342

dt.30.11.2003 and 31.12.2003 respectively, each for a sum of Rs.4,66,958/- drawn on the State Bank of India, SIB(Saifabad), Hyderabad, but the said cheques had been dishonoured; and the suits were filed for recovery of the said amounts with interest @ 18% per annum.

5. The respondents opposed the suit claim.

6. Trial commenced and PWs.1 and 2 were examined by the petitioner. Thereafter, respondents reported no evidence.

7. Petitioner then filed I.A.No.389 of 2011 under Section 151 CPC to reopen the matter and I.A.No.390 of 2011 under Order XVI Rule 1(3) CPC to summon the Managing Director of the 1st respondent company to give evidence. Petitioner also filed I.A.No.391 of 2011 under Order XVI Rule 6 CPC to summon the 1st respondent to produce certain original debit vouchers issued in September and December, 2003.

8. In the affidavit filed in support of these applications, petitioner contended that the 1st respondent had got only marked Exs.B1 to B3 during evidence of petitioner without filing the debit notes which are crucial for deciding the suit and even though notice under Order XII Rule 8 CPC was served, the respondents/defendants produced only copies of debit notes and not the originals and therefore, they had to file these applications requesting the Court to reopen the matter, summon the Managing Director of the 1st respondent to give

evidence and also to file the original documents.

9. Counter affidavit was filed by the respondents to these applications stating that in his cross-examination, PW1 admitted that Exs.A1 and A2 were issued for the purchases made in July, 2003, that respondents made payment vide banker's cheque, and there was no balance payable by respondents for the purchases made in July, 2003. It is further contended that since the suit claim was already satisfied by way of banker's cheque, claim for purchases made in August and September, 2003 was sought to be introduced by the petitioner by way of amendments invoking Order VI Rule 17 CPC (in I.A.No.859 of 2008) and it had been dismissed.

10. By common order dt.15.04.2011, the Court below dismissed all three applications. It held, after referring to the evidence of PW1, that as per the pleadings of the petitioner and in view of the admission of PW1, these applications cannot be allowed.

11. Challenging the orders in I.A.No.390 of 2011 and I.A.No.391 of 2011 respectively, these two Revisions are filed.

12. Counsel for the petitioner contended that in certain circumstances it is open for the plaintiff to call the contesting defendant as his witness to give evidence and there is no legal bar to do so; and that the reasons given by the Court

below in dismissing the applications filed by the petitioner cannot be accepted, since the respondents in their evidence had marked only Exs.B1 to B3, but did not file debit notes which are crucial for deciding the suit. He also contended that the debit note dt.03.09.2003 has been pre-dated since Ex.A1 cheque was dishonoured on dt.30.11.2003, but it was presented for payment in April, 2004; and this would indicate that the debit note is a fabricated document.

13. I have noted the submissions of both sides.

14. In the plaint, the relief claimed is in relation to the purchases made in July, 2003 and the grievance of the petitioner was that the 1st respondent had not made any payments for the said purchases and the cheques issued by the 1st respondent in respect of the said purchases, had been dishonoured, forcing the petitioner to file the above suit under Order XXXVII CPC.

15. In the cross-examination of PW1, there is a statement by him that respondents are not due any amounts towards the purchases made in the month of July, 2003.

16. Whether this statement amounts to an admission by the respondents or not is a matter for the Court below to go into at the time it decides the suit. The purpose for which the present applications have been filed is to direct the respondents to produce certain debit notes showing part

payment made by the 1st respondent allegedly towards the suit cheques.

17. Admittedly, Ex.B1 purchase order dt.15.07.2003 and Exs.B2 and B3 invoices were marked during the cross-examination of PW1. Although the petitioner alleges that debit notes filed by the respondents along with the application for leave to defend were only photocopies, and appear to have been fabricated, since the dispute in question is relatable to the purchases made in July, 2003, and since it is the case of the respondents that the said payment has been made in full which is admitted by PW1, I am of the view that the Court below was right in not allowing these applications.

18. I therefore, do not find any merits in these Civil Revision Petitions and they are accordingly dismissed. There shall be no order as to costs.

19. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

24th August, 2015.
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