

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

-

CIVIL REVISION PETITION Nos.4324 of 2015 and 4107 of 2015

-

COMMON ORDER:

-

Since both the Civil Revision Petitions are connected to each other the same are being disposed of by this Common Order.

C.R.P. No.4324 of 2015 is filed aggrieved by the order dated 01.05.2015 in I.A. No.65 of 2015 in O.S. No.243 of 2013, wherein an application filed under Section 45 of the Indian Evidence Act was dismissed.

C.R.P. No.4107 of 2015 is filed against the order dated 14.08.2015 in I.A. No.203 of 2015 in O.S. No.243 of 2013, wherein an application filed to receive the documents was dismissed.

For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Suit.

The plaintiff filed O.S. No.243 of 2013 on the file of the Senior Civil Judge, Karimnagar seeking a decree against the defendants 1 and 2 for recovery of an amount of Rs.1,80,000/- with interest at 18% p.a., from the date of plaint. The averments in the plaint are that plaintiff and D-1 are known to each other and out of acquaintance an amount of Rs.1,80,000/- was advanced by the plaintiff to D-1 on 24.06.2013. Though D-1 assured to pay the said amount as and when demanded, but he postponed the same on one pretext or the other. Later D-1 issued a cheque dated 31.08.2013 pertaining to the account of D-2-firm, which when presented was returned. A legal notice was issued to D-1 & D-2, and as they failed to pay the amount, suit came to be filed.

When the case was posted for arguments, the defendants filed I.A.

No.65 of 2015 requesting the court to send Ex.B-1-the receipt, alleged to have been issued by wife of the plaintiff, to the Handwriting Expert . He also filed I.A. No.203 of 2015 to summon/receive certain documents to prove the case, more particularly to corroborate the signature of wife of the plaintiff in Ex.B-1 with these documents.

The affidavit filed in support of I.A.No.65 of 2015 shows that the petitioner/D-1 issued the cheque as security, for the medicine purchased by him in the medical agency of the plaintiff, which was misused. Since the wife of the plaintiff, who was examined as P.W.3, denied issuance of receipt and also the contents of the receipt, he submits that it is just and necessary to send the receipt to handwriting expert along with signature of P.W.3. Insofar as the affidavit filed in support of I.A.No.203 of 2015 is concerned, the same is to receive documents to compare the signature of P.W.3 with that of the signature of P.W.3 on the receipt alleged to have been issued by her.

A counter came to be filed by the plaintiff opposing the same, on the ground that wife of plaintiff is not a party to suit and as such the said document cannot be sent to an expert. It is further stated that the said application should have been filed immediately after examination of P.W.3 and not at the stage when the case is posted for arguments.

After considering the rival submissions, both the I.As., were dismissed by the trial court. Aggrieved by the orders passed in the two I.As., the present C.R.Ps., are filed.

The learned counsel for the petitioners mainly submits that the amount due was paid to P.W.3, who on receipt of the same, acknowledged it by issuing a receipt. He submits that since the 1st petitioner has already paid Rs.1,50,000/- and if his application is not entertained, he would be put to irreparable loss as P.W.3 is now disowning everything.

On the other hand, the counsel for the respondent would submit that the petitioner is improving his case from stage to stage and no reasons are forthcoming as to why he never made such an

application at the earliest stage. He submits that the receipt which is alleged to have been executed by P.W.3 was not filed along with written statement.

The averments in the plaint show that D-1 took hand loan of Rs.1,80,000/- from the plaintiff and on repeated demands, D-1 issued the cheque, which when presented was returned. During the course of trial, the plaintiff himself was examined as P.W.1 and got examined P.Ws.2 and 3. The defendants examined the first defendant as D.W.1. When the case is posted for arguments, the present C.R.Ps., filed.

In the cross-examination of P.W.1, it has been elicited that D-1 borrowed the amount as hand loan and Ex.A-1-cheque was issued for repayment of the same. It was no-where suggested to P.W.1 that the D-1 used to purchase medicines from him and the said cheque was given as security. Though P.W.2 was subjected to lengthy cross examination, nothing was suggested to her to prove the theory putforth by the defendant . Though P.W.3 admits that D-1 used to come to their shop for purchasing medicine, but expressed ignorance of D-1 borrowing the amount. It is also to be noted that no suggestion was given to P.W.1 as to the circumstances under which the cheque came into possession of P.W.1.(i.e., as security). In the written statement, the plea putforth by D-1 is that he has paid Rs.1,50,000/- to wife of the plaintiff which was acknowledged by her and that now he is also ready to pay the remaining amount as the transaction was purely business transaction. It is further averred that the cheque was kept with the plaintiff towards security in the form of blank cheque during the course of medical transaction business. As stated earlier, the plea taken in the written statement was not suggested to P.Ws.1 to 3.

But one circumstance, which is to be noted is that, in the year 2014 the D-1 filed I.A. No.214/14 under Order VIII Rule 1 of the Code of Civil Procedure Code requesting the court to receive the document and admit in evidence. The same was allowed on 02.12.2014.

Thereafter, the defendant kept quiet without making any efforts to send the document to the expert. As stated earlier, even after the examination of P.W.3, he never made any effort to send the document to the expert. Only when the case is posted for arguments, the present I.A., came to be filed.

Further, the suit was filed by the plaintiff in his individual capacity and the alleged receipt was not issued by him. The wife of the plaintiff, who is not a party to the proceedings is alleged to have issued the receipt. Further, the C.R.P., filed by the petitioner to implead the wife of plaintiff as a party to these proceedings was rejected by this Court .

Relying upon the judgments of this Court in **Guru Govindu v. Devarapu Venkataramana and Uttamchand Sarma v. Jasti Chinna Veerabhadra Rao**, the counsel for the petitioner submits that the documents can be sent to the Handwriting Expert at any stage of the case. There is no dispute to the said proposition. But the issue is whether it warrants the same.

In **Guru Govindu v. Devarapu Venkataramana (1st supra)** while dealing with the applications made under Section 45 of the Indian Evidence Act, this Hon'ble Court observed as under :

“6. For the foregoing reasons, the civil revision petition is disposed of directing that the question as to whether the disputed document must be sent for opinion of an expert shall be kept open. In case, the trial Court feels that it can record a finding on this aspect, there shall not be any necessity to send the document for an opinion. On the other hand, if it feels that such an opinion is necessary, it can take necessary steps in that regard. There shall be no order as to costs.”

Therefore, if the situation demands and if the Court is of the opinion that the said document is necessary to decide, the trial Court can compare the signature on the “receipt” with that of admitted signatures as required under Section 73 of the Indian Evidence Act and if the trial court comes to a conclusion that it is necessary to send the document to an Expert, it can take necessary steps in this regard, basing on the material available on record and uninfluenced by the

observations if any made by this Court.

Accordingly, both the Civil Revision Petitions are disposed of. No order as to costs. Miscellaneous Petitions pending if any in these C.R.Ps. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 10.12.2015

Note : C.C. by tomorrow.

B/o.

GM