

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.4779 of 2014

ORDER:

Defendant in O.S.No.26 of 2013 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar is the petitioner in the present revision filed under Article 227 of Constitution of India.

In the present revision challenge is to the order, dated 14-11-2014 passed by the said Court, dismissing the I.A.No.823 of 2014.

Heard Sri N. Ashok Kumar, learned counsel for the petitioner apart from perusing the material available before the Court. Despite service of notice none appears for the plaintiff/respondent herein.

The respondent herein instituted the present suit in O.S.No.26 of 2013 against the petitioner herein for recovery of sum of Rs.16,10,000/- on the foot of a promissory note said to have been executed by the defendant/petitioner herein. The defendant/petitioner herein filed a written statement, denying the averments made in the plaint. In the said suit the defendant/petitioner herein filed the present application i.e., I.A.No.823 of 2014 under the provisions of Section 45 of Indian Evidence Act, praying the Court below to send the original pro-note, dated 23-04-2012 to the Forensic Department, Hyderabad, by duly obtaining the specimen thumb impression for comparison

with the thumb impression on the suit pro-note. Resisting the said application the plaintiff/respondent herein filed a counter. The learned District and Sessions Judge dismissed the said application by way of an order, dated 14-11-2014.

The present revision assails the said order passed by the Court below.

It is contended by the learned counsel for the defendant/petitioner herein that the order passed by the Court below is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Section 45 of Indian Evidence Act. It is further submitted by the learned counsel that in the written statement also the defendant/petitioner herein categorically denied the execution of promissory note in favour of the plaintiff and the suit transaction. It is further argued by the learned counsel that in the event of allowing the application, the report of the expert would undoubtedly help the Court for arriving at just and correct conclusion. It is also contended by the learned counsel that the reasons assigned by the Court below while dismissing the application are neither valid nor convincing.

In the above background now the issue that falls for consideration of this Court in the present revision is:

Whether the order passed by the Court below is in accordance with law or whether the same requires any correction by this Court under Article 227 of the Constitution of India?

There is absolutely no dispute with regard to the fact that the respondent herein instituted the present suit for recovery of

amount on the foot of a promissory note, dated 23-04-2012 said to have been executed by the defendant/ petitioner herein.

In the written statement it is pleaded that the defendant did not approach the plaintiff on 23-04-2012 nor the plaintiff advanced a sum of Rs.14,00,000/- to the defendant on the said date and it is also pleaded by the defendant that she never promised to repay the said amount with interest nor she executed any promissory note in favour of the plaintiff. The said written statement also states that the defendant reserves right to prosecute the plaintiff and her husband for forgery and creating a false document. In the affidavit filed in support of I.A.No.823 of 2014 it is also stated by the defendant that she never affixed her thumb impression on the pro-note. It is also stated in the written statement that the husband of the plaintiff forged the said promissory note with his supporters as witnesses. It is also the pleading of the defendant that the plaintiff has no capacity to pay huge amount of Rs.14,00,000/- to the defendant as alleged.

A perusal of the order passed by the Court below manifestly discloses that the learned District and Sessions Judge did not take into consideration all these aspects. In the considered opinion of this Court, in the light of the pleadings in the written statement, if the thumb impressions are sent for examination the same would definitely assist the Court to arrive at correct and just conclusion.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order, dated 14-11-2014 in I.A.No.823 of 2014 passed by the Judge, Family Court-cum-Additional District

and Sessions Judge, Karimnagar. Consequently, I.A.No.823 of 2014 stands allowed. The Court below shall take consequential action for sending the promissory note to the Forensic Department, Hyderabad. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESA SAI, J

March 13, 2015

PN

-

-

-

THE HON’BLE SRI JUSTICE A.V. SESA SAI

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

CIVIL REVISION PETITION No.4779 of 2014

-

March 13, 2015

-

PN