

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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CIVIL REVISION PETITION No.3400 OF 2014

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ORDER :

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The present Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 13.08.2014 passed in I.A. No.479 of 2014 in I.P. No.34 of 2012 on the file of the II Additional Senior Civil Judge, Nandyal, wherein a petition filed under Order VII Rule 14(3) and Section 151 of the Code of Civil Procedure seeking permission to file the petition schedule documents and to mark them as Exhibits was allowed.

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

The facts in issue are as under :

The case of the petitioners is that they filed I.P. against the respondents to adjudicate the first respondent as an insolvent, appoint Official Receiver for taking possession of the properties mentioned in "B" schedule and administer the same for realization and distribution among the petitioners and other creditors of the first respondent in respect of "B" schedule properties. It is stated that at the time of filing, the petitioners filed Photostat copies of the petition schedule documents as the originals could not be filed at that time. Now they intend to place on record the originals of the said Photostat copies which are relevant to prove their case.

The respondents filed their counter opposing the said application. It is stated that no reasons are given as to why the originals could not be filed at the time of filing the Insolvency Petition. It is further stated that documents 2 to 9, which are sought to be placed on record are time barred pronotes and no steps are taken for filing suits for recovery of the amount from R-1 through Court of Law. It is further stated that if really such documents were in existence nothing prevented them from mentioning about them in O.S. No.170 of 2012 and O.S. No.49 of 2013 on the file of Principal Senior Civil Judge Court, Nandyal. After hearing both sides, the learned Senior Civil Judge allowed the I.A. Challenging the same, the present Revision is filed.

Learned counsel for the petitioners reiterated the contents of the counter filed before the lower court and stated that grave prejudice would be caused if the documents are allowed to be marked.

Learned counsel for the respondents herein opposed the Revision contending that Creditor I.P. was filed before the trial court to declare the first respondent therein (first petitioner herein) as insolvent and also appoint Official Receiver for taking possession of the properties mentioned in the "B" schedule for realization and distribution among the petitioners therein i.e., respondents herein and also other creditors of the first respondent therein. He submits that marking of these documents do not cause any prejudice as copies of documents are already on record.

A careful perusal of the material placed on record would show that I.P. was filed by the respondents herein, who are the creditors of the first petitioner herein and they have lent amounts to the first petitioner, who executed promissory notes in their favour on various dates. The record also reveals that "B" schedule property which is shown in the main I.P. was transferred in favour of the petitioner No.2 by petitioner No.1 herein, who is none other than the mother of the first petitioner. While filing the main I.P.No.34 of 2012, xerox copies of promissory notes were filed. Subsequently, an I.A. was filed to receive the original pronotes of the Xerox copies, executed by the first petitioner in favour of the respondents herein. One of the arguments, which was advanced by the learned counsel for the petitioners herein is that these documents cannot be taken into consideration since these pronotes are barred by limitation. But, the record reveals that Xerox copies of these documents were already filed along with the petition and the originals could not be filed in view of the compromise talks which were going on between the parties at that point of time. Hence, the argument of the counsel that the pronotes cannot be brought on record as they are barred by limitation cannot be accepted.

The next argument advanced by the learned counsel for the petitioners is that under Section 9 of the Provincial Insolvency Act, the first requirement is that there must be existing debt in favour of the petitioner, as a creditor, as against a person who is sought to be adjudicated as an insolvent. To prove the said debt the original pronotes are required to be placed before the Court. But the pronotes, which are sought to be placed before the Court are time barred and no proceedings are initiated basing on these pronotes. Now, these pronotes are sought to be brought on

record only to show the amount borrowed by the first petitioner herein from the respondents. Apart from that the record discloses that the case is at the stage of trial i.e., chief-examination of P.W.1 and the objections if any can be raised during the course of trial. In the light of the above circumstances, the Civil Revision Petition is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed confirming the finding of the trial court. No costs.

As a sequel to it, miscellaneous petitions pending if any in this C.R.P., shall stand closed.

C.PRAVEEN KUMAR,J

Dt:20.03.2015

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