

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

CIVIL REVISION PETITION No.4792 of 2012

ORDER:

Defendant in O.S.No.5 of 2009 on the file of the Senior Civil Judge, Huzurabad, Karimnagar District 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 27-08-2012 passed by the said Court, dismissing I.A.No.98 of 2012.

Heard Sri Bankatlal Mandhani, learned counsel for the petitioner and Sri K. Buchi Babu, learned counsel for the respondent apart from perusing the material available before the Court.

The respondent herein instituted O.S.No.5 of 2009 against the petitioner herein for recovery of a sum of Rs.2,50,000/- with future interest on the foot of the promissory note alleged to have been executed by the petitioner herein. Resisting the averments in the plaint the defendant/petitioner herein filed a written statement on

23-04-2009. In the said suit the defendant/petitioner herein filed the present application i.e., I.A.No.98 of 2012 praying the Court below to send Ex.A1 promissory note, dated

02-11-2005 to an Expert for his opinion, to ascertain the age of the ink of petitioner and PWs.2 to 4 on Ex.A1 and also ink to fill up the blanks of the promissory note.

The plaintiff/respondent herein filed a counter, opposing the said application. The learned Senior Civil Judge, by way of an order, dated 27-08-2012 dismissed the said application.

Calling in question the validity and legal sustainability of the said order the present revision has been filed.

It is contended by the learned counsel for the petitioner that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and is opposed to the very spirit and object of provisions of Section 45 of Indian Evidence Act. It is also submitted by the learned counsel that had the contents of the affidavit filed in support of the application and the written statement filed by the petitioner herein been considered by the learned Senior Civil Judge from proper perspective, the order under revision would not have emanated. It is also contended by the learned counsel that in the event of the present application being allowed, the opinion of the Expert would un-doubtedly render assistance to the Court below to arrive at correct and just conclusion. It is also argued by the learned counsel that the Court below grossly erred in holding that there is inconsistency in the pleadings.

On the contrary, it is submitted by the learned counsel for the respondent that the order under revision is inconformity with the provisions of Section 45 of the Indian Evidence Act and there

is no illegality nor any jurisdictional error in the order passed by the Court below as such the present revision is not maintainable under Article 227 of the Constitution of India. It is further argued by the learned counsel that there are absolutely no bonafidees in the present application and there is absolutely no explanation for the delay in filing the present application having filed the written statement on 23-04-2009. It is also submitted by the learned counsel that the reasons assigned by the Court below are cogent and convincing. It is also argued by the learned counsel that the chief affidavit of PW1 was filed in the month of June, 2009 and PW1 was cross-examined on 13-07-2011.

In the above background now the issues, which this Court is called upon to answer in the present revision are:

1. *Whether the order under revision is in accordance with law ?*
2. *Whether the order impugned warrants any interference by this Court under Article 227 of the Constitution of India?*

The information available before this Court manifestly discloses that the respondent herein instituted the suit on the foot of a promissory note said to have been executed by the petitioner herein. The defendant/petitioner herein filed written statement on 23-04-2009, denying the execution of the promissory note on 02-11-2005. The said written statement further pleads that the defendant never approached the plaintiff for the alleged loan at any point of time much less on 02-11-2005.

It is also significant to note that in the affidavit filed in support of the I.A.No.98 of 2012 it is stated that the petitioner and the respondent jointly ran a Garment business in Huzurabad in the year 2002 and in the process the plaintiff asked the defendant to sign on some blank promissory notes and retained the same with him. It is also stated in the affidavit that in order to take vengeance because of certain events the respondent/plaintiff created Ex.A1 promissory note by filling up the blanks with the help of PWs.2 to 4.

A perusal of the order passed by the learned Senior Civil Judge clearly shows that the Court below took all these aspects into consideration and considered the same thoroughly and meticulously and came to a conclusion that there are no merits in the application and the application is also a belated one. In the impugned order the learned Senior Civil Judge, took note of the aspect that there is no suggestion in the cross-examination of PW1 that blank pro-notes were obtained by the plaintiff and they are with him. The learned Senior Civil Judge also took note of the aspect that in the written statement nowhere it is mentioned that the petitioner was asked by the plaintiff to sign on blank pro-notes. Apart from this there is absolutely no plausible explanation forthcoming as to why the petitioner herein filed the present application belatedly on 16-02-2012 having filed the written statement as long back as on 23-04-2009. It is settled and well-established proposition of law that unless the order impugned suffers from perversity and jurisdictional error, the invocation of jurisdiction of this Court under Article 227 of the Constitution of India is impermissible.

For the aforesaid reasons, the Civil Revision Petition is dismissed. However, it is made clear that the Court below shall dispose of the suit un-influenced by any of the observations made in the impugned order or in the present order. There shall be no order as to costs.

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

A.V. SETHA SAI, J

March 17, 2015

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

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