

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 4453 OF 2014

ORDER:

This Revision is filed challenging the order dated 30.4.2014 in I.A.No. 327 of 2014 in O.S.No. 240 of 2012 of the Principal Senior Civil Judge, Eluru.

2. Petitioner herein is the defendant in the above suit. Respondent/plaintiff filed the suit against petitioner for recovery of amounts on the basis of a promissory note. Written statement was filed by the petitioner opposing the suit claim contending that taking undue advantage of the custody of the blank promissory note taken from the petitioner by one M.V.S.S. Subba Rao relating to a debt discharge for the year 2000-2001 in respect of which O.S.No. 240 of 2012, 241 of 2012 and 243 of 2012 were filed, the suit promissory note was fabricated by filling up the blanks.

3. Issues were framed. Trial commenced. Plaintiff came into witness box and marked the suit promissory note.

4. At that stage, the petitioner filed I.A.No. 323/2014 under Order 6 Rule 17 CPC contending that till the respondent came into the witness box, he did not notice that the suit promissory note contained a material alteration and that in the said document the year 2001 was altered as 2009.

5. This application was opposed by the respondent contending that since the trial had commenced, the application for amendment of written statement cannot be maintained. It was pointed out that the evidence of PWs 1 & 2 were already recorded and at the stage of cross-examination of PW-3, this application is filed. It was also contended that plea of material alteration was brought in by the petitioner as a last resort after the cross-examination of PWs 1 & 2. It was also denied that there is any material alteration in the date on the promissory note.

6. By order dated 30.4.2014, the Court below dismissed the I.A. It held that after the examination of PWs 1 & 2 was concluded, when the suit was coming up for cross-examination of PW-3, this application was filed; that the petitioner had several opportunities but could not show that inspite of his due diligence he could not have raised the matter for amendment of written statement before the commencement of trial.

7. Challenging the same, this Revision is filed.

8. Counsel for the petitioner contended that the petitioner did not have an opportunity to look at the original suit promissory note till the respondent came into witness box and gave evidence; that then only the petitioner had noticed the year 2001 written on the suit promissory note was altered as 2009; and therefore, since it was a bonafide mistake, due diligence on the part of the petitioner should be presumed by the Court below.

9. Counsel for the respondent on the other hand refuted the above contentions and reiterated that the order passed by the Court below is correct and does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of

India.

10. The suit had been filed by the respondent against the petitioner on the basis of a promissory note dated 24.11.2009 allegedly executed by the petitioner in favour of the respondent. In the written statement, defence has been taken by the petitioner that the respondent had taken advantage of a blank signed promissory note taken from him by one M.V.S.S.Subba Rao in relation to a debt discharge relating to the year 2000-2001 and that the suit promissory note is one among the promissory notes of that period. No plea about the material alteration in the promissory note had been raised in the written statement.

11. After the issues were framed and PWs 1 & 2 were examined and chief-examination of PW-3 was also completed, at the stage when the suit was coming for examination of PW-3, the application for amendment was filed. It is not possible to accept the plea of the petitioner that only when the respondent went into the witness box and gave evidence; he had an opportunity to look at the original promissory note and then discovered that it contained a material alteration. The plaint as well as the documents on the basis of which the suit is filed would have been furnished to the petitioner and only after looking into suit document, the written statement is expected to be prepared. If the petitioner or his counsel had omitted to do so, at least they should have sought for amendment of the written statement before the trial commenced. However, once the trial has commenced, they cannot seek amendment of the written statement because due diligence on their part is lacking. Therefore, I do not find any error of jurisdiction in the impugned order.

12. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16.06.2015

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