

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5450 OF 2015

ORDER:

The order dated 02.09.2015 in I.A.No.234 of 2015 in O.S.No.114 of 2011 passed by the learned Senior Civil Judge, Suryapet, in refusing to send the promissory note to the expert opinion under Section 45 of the Indian Evidence Act (for short "the Act"), is challenged before this Court.

It is the case of the petitioner that he had specifically pleaded in the written statement that the figure "2" has been added in the promissory note subsequent to the execution of the promissory note, and further the petitioner also had paid a sum of Rs.33,000/- towards interest and there was an agreement between the petitioner and the respondent-plaintiff, who was professional money lender, not to charge interest. Learned counsel for the petitioner also submits that no prejudice as such would be caused if the document is sent to the expert for his opinion and he relies on the judgment of this Court in C.R.P. No.5207 of 2012 dated 18.08.2015 wherein this Court had elaborately discussed that the delay in filing application under Section 45 of the Act is not fatal and the validity, sufficiency or otherwise of the evidence cannot be considered at the stage of considering the application under Section 45 of the Act.

On the other hand the learned counsel for the respondent Sri A. Prabhakar while drawing attention to the written statement wherein the execution of promissory note has been admitted and submitted that at the fag end of the trial the application is filed to drag the proceedings. He would further submit that in the cross-

examination also the petitioner had admitted the execution of the document. So far as rate of interest is concerned the same would be considered by the Court below while dealing with the matter finally.

Having perused the documents placed on record and having heard the arguments, I find no material irregularity in passing the order by the learned Senior Civil Judge, Suryapet. As can be seen from the written statement the petitioner-defendant had admitted the execution of the promissory note. His specific case is that the rate of interest column was kept blank by the respondent-plaintiff as he is a professional money lender and he is in the habit of collecting interest at the rate of 36% per annum. Further in para 4 of the written statement the defendant had contended that he had already paid a sum of Rs.33,000/- towards interest and further interest was agreed to be waived by the plaintiff. In the affidavit filed in support of the I.A. No.234 of 2015 in O.S.No.114 of 2011, there is a total denial of the execution of the promissory note and the signatures on the promissory note. The specific plea taken in the I.A. affidavit is that Ex. A1 is the rank forgery and further the petitioner sought Ex.A1 to be sent to the handwriting expert along with the admitted and specimen signatures for comparison with the disputed document Ex.A1 and admitted signatures. As can be seen from the record, the pleadings in the written statement to the pleadings in I.A. affidavit there is a total contradiction. In that view of the matter, the court below had come to the conclusion that the application made is only to delay the suit proceedings which is at the stage of fact end and further at the stage of defence evidence. So far as interest is concerned, if any amount of interest is paid by the petitioner-defendant and if the defendant placing sufficient proof of the same the same would be given remission by the Court

below while making the final judgment. At any rate, the aspect of the interest is not required to be considered at this stage. In that view of the matter and for the reasons stated above the CRP lacks *bonafides* and there is no reason to interfere with the order passed by the Court below.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Dated: 12.02.2016
Ssv