

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1508 of 2016

ORDER:

In this defendants' revision, under Article 227 of the Constitution of India, the challenge is to the order dated 12.02.2016 of the learned II Additional Senior Civil Judge, Vijayawada, passed on a memo, dated 02.04.2013, filed by the defendants.

2. I have heard the submissions of learned counsel for the revision petitioners/defendants (hereinafter referred to as 'the defendants') and learned counsel for the respondent/plaintiff (hereinafter referred to as 'the plaintiff'). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows: The sole plaintiff brought the suit against the defendants for recovery of money in a sum of Rs.9 lakhs and odd with subsequent interest and costs. The defendants filed written statement resisting the suit. While the trial is in progress, the defendants filed I.A.No.859 of 2012 to receive two documents viz., (i) Deposit Certificate S.No.18 dated 28-09-1999 issued by the 1st defendant to the plaintiff, and (ii) Letter acknowledging receipt of interest payment by way of D.D received by the 2nd defendant to the plaintiff through Kothuru Manohar of January 2001. (The description of documents is reproduced verbatim). The said application was allowed by the trial court. However, when the affidavit in lieu of examination-in-chief was filed by one of the

defendants' witness along with the above said two documents and other documents, the trial Court while recording the evidence of the said witness permitted to mark all other documents filed with the said affidavit but excluded the aforementioned two documents from marking. Aggrieved of the said course adopted by the trial Court, the defendants filed the subject memo dated 02.04.2013 requesting the trial Court to mark the said documents also in Exhibit 'B' series stating *inter alia* that the petition to receive the documents in I.A.No.859 of 2012 was already allowed and that the said documents are crucial to the defence of the defendants.

4. Earlier the defendants filed revision before this Court when the trial Court, according to them, failed to pass orders on that memorandum. Later, the request in memorandum of the defendants was rejected by the order impugned in this Revision. Therefore, the defendants are before this Court.

5. Learned counsel for the defendants would submit that since the application to receive the documents was already allowed by the trial Court and as the two documents were received on file, the trial Court ought not to have rejected the request for marking the said documents through the defendants' witness, Arja Ravi, and that the trial Court ought to have allowed the memorandum filed by the defendants and permitted them to mark the said two documents also in Exhibit 'B' series. He, therefore, further contended that the orders passed on the memorandum are unsustainable.

6. Learned counsel for the plaintiff would contend that earlier trial Court, on 24.02.2010, while recording the deposition of DW1,

passed a speaking order holding that the said original deposit certificate is not a complete document (entire paper) and that it is in torn condition and that it contained over writings and writing as 'cancelled' and therefore, the two documents, which are subject matter of the present order of the trial Court, cannot be permitted to be marked; and that in view of the said earlier rejection order dated 24.02.2010 of the trial Court, the trial Court was justified in not permitting the defendants to mark the said two documents. He would also submit that when the defendants later filed the application in I.A.No.859 of 2012 to receive the documents, they suppressed the earlier orders of the trial Court and hence, it follows that the defendants played fraud on the trial Court and in the circumstances stated, the subsequent order granting leave to file the documents does not inure for the benefit of the defendants.

7. The very narration of the facts and submissions which are not in dispute is sufficient to safely conclude that the defendants are not entitled to request the trial Court to mark the said two documents, which are already refused to be received on file by the trial Court, by its earlier orders. The fact that the earlier rejection order refusing the request of the defendants to mark the said documents was suppressed by the defendants when they filed I.A.No.859 of 2012 is not in dispute. If the defendants are aggrieved by the earlier order dated 24.02.2010 of the trial Court rejecting their request to file the said documents, they ought to have preferred a revision and tested the said order of the trial Court. But they did not do so and allowed the said order to become final and suppressed the said fact and filed I.A.No.859 of 2012 to receive the very same documents on file. In view of

suppression of the fact and also plaintiff's failure to bring to the notice of the Court the said fact the trial Court allowed the said I.A.

8. Be that as it may, in view of the conduct of the defendants and the earlier orders of the trial Court rejecting the request of the defendants to permit them to file the said documents, the further request of the defendants to mark the very same documents by filing either a petition to receive the documents or a memorandum, which is subject matter of the present revision, does not arise for consideration. In the facts and circumstances of the case and in the light of the fact that the defendants suppressed the earlier orders of the Court and played fraud on the trial Court, the subsequent order granting leave to file the very same documents, which were earlier rejected to be filed, does not inure for the benefit of the defendants as fraud vitiates every solemn act.

9. Viewed thus, the order passed by the Court below does not call for any interference.

10. In the result, the Civil Revision petition is dismissed. There shall be no order as to costs.

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

M. Seetharama Murthi, J

25th October, 2016.
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