THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.408 of 2011

ORDER :

This Revision is filed challenging the order dt.22.11.2010 in I.A.No.487 of 2010 in O.S.No.50 of 2009 on the file of Senior Civil Judge, Yellamanchili.

2. The petitioners herein are defendants in the above suit filed by respondent against them for recovery of amount on the basis of promissory notes.

3. The petitioners filed written statement denying the suit claim, and contended that no consideration passed under the suit promissory notes.

4. One year after filing of the written statement, the petitioners filed I.A.No.487 of 2010 to receive xerox copies of five mortgage deeds and one receipt without explaining the connection between the documents, which they proposes to file, and the suit except mentioning that they are necessary to prove their case.

5. In the affidavit filed along with the said I.A., the petitioners merely stated that documents were misplaced somewhere.

6. Counter-affidavit was filed by respondent disputing the claim of petitioners. The respondent specifically contended that the mortgage transactions are in no way connected to the suit promissory note transactions and they are separate transactions with separate consideration. He also took plea that the mortgagors under the said mortgage deeds are persons with whom he is not concerned, and that xerox copies of registered mortgage deeds cannot be received in evidence.

7. By order dt.22.11.2010, the Court below partly allowed I.A.No.487 of 2010 insofar as a receipt sought to be marked on behalf of petitioners is concerned, and dismissed it with regard to documents relating to mortgage transactions. It held that merely because there are mortgage transactions between the defendants' family and Smt. Simhachalam's family, it does not mean that there cannot be any money transaction also between the parties; and merely because defendants executed some mortgage deeds in favour of plaintiff's family members, the defendants cannot avoid liability on the promissory notes.

8. The counsel for petitioners contended that the order passed by the Court below is unsustainable and that it is the stand of petitioners that for the interest due on the said mortgage deeds, the suit promissory notes were obtained in blank and they were not supported consideration and that was why they were sought to be marked.

9. Firstly, the documents relating to five mortgage transactions sought to be filed by petitioners along with I.A.No.487 of 2010 are photo copies. It is not disputed that these mortgage transactions are registered. No explanation is furnished why petitioners did not obtain certified copies of the mortgage deeds and file them along with the application.

10. Even otherwise, the petitioners had specifically admitted that they had referred to these transactions in their written statement, if so, they ought to have filed these documents along with the written statement. The contention of petitioners that these documents were misplaced somewhere at the time of filing written statement cannot be accepted since petitioners are parties to the said transaction and even otherwise they could have obtained certified copies of the said documents.

11. Under Order 8 Rule 1-A(3), it is incumbent on the part of defendants to file documents along with written statement unless they give a valid reason why they could not file it earlier.

12. I am of the opinion that the reason given by petitioners does not appear to be *bona fide*. Even otherwise, as rightly observed by the Court below there may not be any connection between the promissory note transactions and the mortgage transactions.

13. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the

Constitution of India. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-02-2016
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