

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2086 of 2016

ORDER:

This is a revision under Article 227 of the Constitution of India by the unsuccessful petitioner-defendant assailing the order dated 01.03.2016 of the learned I Additional Senior Civil Judge, Warangal, passed in IA.No.1080 of 2015 in OS.No.174 of 2014 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908, ('the Code', for brevity) requesting for permission to amend the written statement by incorporating paragraph 7 in the written statement as stated in the petition list.

2. I have heard the submissions of Sri Balaji Medamalli, learned counsel appearing for the revision petitioner-defendant ('the defendant', for brevity) and of Sri Challa Ajay Kumar, learned counsel appearing for the respondent-plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiff brought the suit against the defendant on the foot of a promissory note for recovery of principal amount of Rs.6,00,000/- with interest and costs. The defendant filed a written statement contending that he never borrowed any amount much less the principal amount stated in the promissory note from the plaintiff and that he has no business or personal necessities for borrowing such amount and that he never executed the suit promissory note and that when the plaintiff issued a legal notice prior to the institution of the suit demanding the amount under the suit promissory note, he issued a reply denying not only the execution of the demand promissory note but also making a request to send a copy of the same for giving a further detailed reply but the plaintiff without complying with the said request in the reply notice forged the suit document and filed the suit. After issues are settled and PW1's affidavit in

lieu of examination in chief was filed and when the suit is coming for cross examination of PW1, the defendant filed the subject application seeking permission to amend the written statement. The contentions in support of the said request of the defendant are that when the defendant is discussing the defence with the counsel for the purpose of cross-examination of PW1, the counsel advised to seek the proposed amendment and therefore the instant application is filed. The plaintiff filed a counter reiterating the plaint averments to the effect that the defendant borrowed the amount and executed the suit promissory note and failed to repay the same and that therefore the plaintiff is constrained to file the suit for recovery of the amount and that the defendant hatched a plan to evade payment of the suit debt and therefore filed the present application for amendment after the trial has commenced. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the defendant. Aggrieved thereof, the defendant filed this revision petition.

4. Learned counsel for the defendant while reiterating the contentions of the defendant would submit that the defendant has already taken a plea in the written statement that the suit promissory note is forged and that by way of the proposed amendment the defendant now intends to take a further plea that there was a sale transaction under the registered sale deed dated 06.03.2013 between the plaintiff and others on one hand as vendors and the defendant as vendee on the other and that the said sale deed though executed on 29.12.2012 was registered on 06.03.2013 and that all the parties to the sale deed signed the said document and that there is no relationship between the plaintiff and the defendant and that taking aid of the signatures of the defendant that are available on the sale deed, the plaintiff forged the signature on the suit promissory note and filed the suit to make a wrongful gain and that the said proposed amendment does not change the nature and character of the defence and does not cause any prejudice to the plaintiff, if it is permitted, and,

therefore, the trial Court ought to have allowed the amendment instead of dismissing the petition. He would also submit that since PW1 is not even cross-examined, the amendment cannot be refused merely on the ground of delay, as it is settled law that the defendant is entitled to take even inconsistent pleas in his written statement and that the trial Court without appreciating the proposed defence and pleas of the defendant erroneously observed in the impugned order that the sale transaction has no relevance to the promissory note transaction and therefore the order is liable to be set aside.

5. Per contra, learned counsel for the plaintiff while supporting the orders of the trial Court and while reiterating the case of the plaintiff, which is extracted supra, would submit that in view of the proviso appended to Order VI Rule 17 of the Code, the amendment of the written statement after the commencement of trial is impermissible and that the defendant did not allege and prove that despite due diligence the proposed amendment could not have been taken prior to the commencement of the trial and that the trial court was correct in observing that there is no connection between the sale transaction under the sale deed and the suit promissory note transaction and that there is no merit in the revision and that the revision is liable to be dismissed.

6. I have given detailed and thoughtful consideration to the facts and submissions. In view of the facts, events and contentions which are narrated supra there is no need to further dilate on facts. In a suit on the foot of a promissory note for recovery of money, the defendant having taken the plea that the suit promissory note is forged now by way of the proposed amendment to the written statement wants to incorporate paragraph 7 in the written statement to enable him to introduce a defence to the effect that there was admittedly a sale transaction under a registered sale deed dated 06.03.2013 between the plaintiff and others on one hand as vendors and the defendant as vendee on the other and that the said sale deed though executed on 29.12.2012 was registered

on 06.03.2013 and that all the parties to the sale deed signed the said document and that there is no relationship between the plaintiff and the defendant and that taking aid of the signatures of the defendant that are available on the said sale deed, the plaintiff forged the signature on the suit promissory note and filed the suit to make a wrongful gain. Thus, by way of the proposed amendment the defendant merely wants to plead that since the said registered sale deed contained his signatures, the plaintiff had an opportunity to know his signature and that taking aid of his signatures on the said registered sale deed, the plaintiff forged his signature on the suit promissory note. There was a sale transaction under registered sale deed dated 06.03.2013 between the plaintiff and others on one hand as vendors and the defendant as vendee on the other is admitted. The document was registered on 06.03.2013. It is also fairly stated at the hearing that the defendant is having possession of the registered sale deed being vendee thereunder. It is not the case of the defendant that a scanned copy of the registered sale deed was obtained from the Registrar's Office concerned and by taking aid of the signatures thereon, the suit promissory note is forged. It is the specific case of the defendant in the proposed amendment that taking aid of the signatures of the defendant on the sale deed, the suit promissory note is forged. When the sale deed is in possession of the defendant, the contention that the suit promissory note is forged by taking aid of the signature of the defendant available on the sale deed does not merit consideration and needs no countenance. Therefore, on the basis of said plea the proposed amendment cannot be permitted. Even otherwise, the proposed amendment appears to be dealing with the evidence which the defendant proposes or intends to introduce by way of cross-examination of PW1 and also in support of his defence that the suit promissory note was forged; therefore the amendment need not be permitted as the Rules of Pleading postulate that evidence need not be pleaded.

7. On the above analysis, this Court finds that there is no error, irregularity and illegality calling for interference with the order of the trial Court.

8. In the result, the Civil Revision Petition is dismissed confirming the order of the trial Court. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision, shall stand closed.

9th December, 2016
Vjl

M.Seetharama Murthi, J

