

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No. 2767 OF 2016

ORDER:

This Revision is filed questioning the order dated 29.3.2016 in I.A.No. 15 of 2016 in O.S.No. 63 of 2013 on the file of Senior Civil Judge, Rayachoty, Y.S.R. District.

2. Revision petitioner herein is the plaintiff. He filed the above referred I.A to receive documents that are filed along with the application. According to affidavit filed in support of the petition, he secured some documents containing the signatures of the defendant to compare them with the signature of the defendant on the suit agreement as defendant took plea of forgery. He stated that these documents are essential to prove his case and that there is no willful or intentional latch on his part in not filing these documents earlier and prayed for condoning the delay in filing the documents. Respondents filed counter disputing the affidavit averments contending that the petition is filed at a belated stage and the petitioner is filing one petition or other without commencing trial to protract the proceedings and that the petition is totally devoid of merits. On these contentions trial Court dismissed the application, aggrieved by the same, present Revision is preferred.

3. Heard both sides.

4. Advocate for Revision petitioner submitted that the suit is filed for specific performance of an agreement of sale and as the defendant raised plea of forgery documents containing his signatures were filed along with the application to enable the Court to compare and that application is filed before commencement of trial. He submitted that the Court below dismissed the application holding that the documents are no way relevant and that the burden is on the defendant to prove the plea of forgery and that as the plaintiff has not filed any petition to send the documents to a handwriting expert, no purpose would be served by receiving those documents particularly for comparison. It is further submitted that application is dismissed on the ground of premature.

5. On the other hand, the advocate for respondent submitted that the trial was commenced and the Court below has rightly dismissed the application as the documents are no way relevant for the issue involved in the suit.

6. I have perused the material placed before this Court including the affidavit filed in support of I.A No. 15 of 2015 and the counter of respondent filed in answer to the affidavit of the plaintiff. I have also perused the impugned order dated 29.3.2016. As seen from the order, the trial Court without considering the fact whether the plaintiff has properly explained the delay in filing the documents into

Court, decided the point as to the relevancy of the document which is not required at that stage as the documents are filed with a petition to condone delay. The only point that has to be decided is whether the delay is properly explained or not and with regard to admissibility and relevancy it has to be decided at the time when the documents are tendered in evidence for marking.

7. As seen from the counter filed on behalf of the respondent, the only objection raised is that the petition is filed at a belated stage. Though it is contended that the application is filed after commencement of trial, the same is not supported by any record. On the other hand, the very counter of the respondent do so that this application is filed without commencing trial to protract the proceedings. Even the Court below also recorded that the suit is coming up for trial since 2014 and the plaintiff without commencing the trial filed the petition to receive documents which are not necessary and relevant to decide the controversy involved in the suit.

8. Considering these aspects, I am of the view that the trial Court is not right in dismissing the application on the ground of relevancy at the initial stage of receiving them.

9. For these reasons, the impugned order dated 29.3.2016 is set aside and I.A.No. 15 of 2016 is allowed and the documents are received subject to proof and relevancy. The defendant is at liberty to question the relevancy of the documents at the time of tendering them

in evidence for marking.

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

JUSTICE S. RAVI KUMAR

DATE: 15.07.2016.

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