

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.5637 of 2015 & 2 OF 2016

COMMON ORDER:

These the two revision petitions are filed against separate orders dated 05.10.2015 passed in I.A. Nos.1397 and 1398 of 2015 in O.S. No.138 of 2008 by the Senior Civil Judge, Kandukur.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondent. Perused the material on record.

3) The revision petitioner is the defendant in O.S. No.138 of 2008. The suit is filed for recovery of money filed by the plaintiff against him where the defence of suit pronote is forged. In the course of evidence of the defendant as DW.1, he exhibited a certificate dated 24.02.2014 issued by Depot Manager of APSRTC, where he is working as a conductor of Nellore Depot at the relevant time, to show that on the alleged date of pronote, he was on duty and said certificate was already marked as Ex.B1 and in the cross examination of DW.1 by the plaintiff, there is no dispute on the genuineness of the certificate. Thus, two applications were filed in I.A. Nos.1397 and 1398 of 2015, one is to reopen the suit for further evidence and the other is to summon the Depot Manager, APSRTC, Nellore Depot-2 for cause production of attendance register dated 23.05.2006 to give evidence and the lower Court dismissed both the petitions, against which the two revisions are maintained.

4) In the affidavit it is mentioned that the said certificate was not marked as exhibit even filed by him and to prove the said

certificate, original attendance is required to be summoned. The same is now opposed by the plaintiff as respondent to the revision petitions. The lower Court could have been answered only to the requirement of summoning of the witness either on behalf of the defendant or if at all, any necessity even as a court witness. Leave about, reopen and to summon a witness at this stage, it is on consideration of a necessity and not so casually for the arguing sake. No doubt, while dismissing the petitions what the lower Court observed is, when the defendant disputed the signature on the pronote as forged one, he sought expert opinion and the same was received opining the disputed signatures and standard signatures were written by the same person.

5) Leave it as it is, it is the evidence that to be considered by the Court, if at all under Section 73 of the Indian Evidence Act, 1872 within its power in appreciation of evidence from such opinion supported by reasons for the opinion. However, lower Court on that ground should not have been dismissed the applications.

6) In fact, the certificate already exhibited as Ex.B1 and genuineness of the certificate is not in dispute from the cross examination of DW.1 and as such there is no necessity to further establish the contents of the Ex.B1—certificate not in dispute, by calling Depot Manager to produce the original attendance register, as the certificate itself is a proof to that effect from contents not in dispute. Having regard to the above, the purpose of summoning the Depot Manager to produce the register and to receive the evidence no way survives and thereby on that ground alone the

revision petitions do not require adjudication by sitting against the impugned orders.

7) Accordingly and subject to the above observations, both the revision petitions are dismissed. No order as to costs.

8) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.17.09.2016
knl

