

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4292 of 2015

ORDER:

The unsuccessful defendant had preferred this revision under Article 227 of the Constitution of India assailing the order dated 11.08.2015 of the learned II Additional Senior Civil Judge, Vijayawada of Krishna District passed in I.A.no.209 of 2015 in I.A.no.844 of 2012 in O.S.No.132 of 2011 filed under Section 151 of the Code requesting to reopen I.A.no.844 of 2012 by setting aside the order dated 08.08.2013.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The defence of the defendant, in support of his request in the aforementioned application, in brief, is this:

The suit pronote is a forged document; the signatures on the revenue stamp affixed to the said document and the signatures underneath the revenue stamp are not matching; therefore, there is necessity to send exhibit A1, the suit promissory note, to a handwriting expert for furnishing an opinion as to the genuineness or otherwise of the signatures appearing on the suit promissory note. Hence, the defendant had filed I.A.no.844 of 2012 requesting to send exhibit A1, the suit promissory note, to a handwriting expert for comparison of the disputed signatures thereon with the admitted/specimen signatures of the defendant on other documents and for furnishing an opinion. The said application was allowed in the year 2013 itself and the suit document along with other documents was sent to a handwriting expert of Truth Labs, Hyderabad. However, the said expert returned the document to the Court stating that the disputed signatures on the promissory note are written in full whereas the standard signatures which are furnished for comparison are simplified signatures in nature and that

therefore, it is not possible to compare the disputed signatures with those of the specimen signatures. Thereafter, the petition was closed on 08.08.2013.

Subsequently, the defendant had filed I.A.no.167 of 2014 for issuing summons for causing production of the documents from his school and college, which contain his signatures. The said petition was dismissed as I.A.no.844 of 2012 was already closed on 08.08.2013. Due to oversight, the defendant did not notice that I.A.no.844 of 2012 was closed. Therefore, the aforementioned application in I.A.no.209 of 2015 is filed for re-opening I.A.no.844 of 2012 which was closed on 08.08.2013.

4. On the other hand, the case of the plaintiff, in brief, is this:

The material allegations in the affidavit of the defendant are false. All the petitions filed by the defendant were dismissed by the trial Court. I.A.no.844 of 2012 was closed on 08.08.2013 itself in view of the fact that the expert had returned the documents expressing his inability to furnish an opinion for insufficiency of the material furnished for comparison. Hence, the petition may be dismissed.

5. On merits, the trial Court had dismissed the petition of the defendant and refused to reopen the application in I.A.no.844 of 2012. Hence, the defendant is before this Court.

6. All the facts and the contentions are already stated supra, in detail. The suit is filed by the respondent/plaintiff for recovery of money on the foot of a promissory note. The defendant filed an application in I.A.no.844 of 2012 under Section 45 of the Indian Evidence Act to send the suit promissory note to a handwriting expert to furnish his opinion as to the genuineness or otherwise of the signatures said to be of the defendant on the said document after comparison of the same with the admitted/specimen signatures of the defendant on other documents. The trial Court having allowed the application of the defendant sought for an opinion from an expert of Truth Labs, Hyderabad. The expert had returned the record to the Court below stating that the signatures on the promissory note are written in full whereas the standard signatures furnished are simplified in nature and as such, it is

not possible to compare the two sets of signatures and furnish an opinion. Thereafter, the said application in I.A.no.844 of 2012 was closed on 8.8.2013. The defendant did not pursue the matter and had kept quiet. In the year 2014, the defendant had filed I.A.no.167 of 2014 for issuing summons for causing production of the documents from his school and college, which contain his signatures. The said petition was dismissed by the trial Court as I.A.no.844 of 2012 was already closed on 08.08.2013. However, the defendant contends that due to oversight, the defendant could not notice the fact that I.A.no.844 of 2012 was closed on 08.08.2013 and that, therefore, the defendant had moved the instant application in I.A.no.209 of 2015 to reopen I.A.no.844 of 2012 by setting aside the closure order dated 8.8.2013. Having considered the facts and since the suit is at the stage of arguments, the trial Court declined to grant the request of the defendant. Though the application filed by the defendant in I.A.no.844 of 2012 was allowed and his request therein was considered, the purpose was not served as the expert had returned the record to the court below stating that it is not possible to furnish an opinion on the material furnished by the Court. Thereafter, I.A.no.844 of 2012 was closed on 8.8.2013. The defendant had kept quiet and filed an application belatedly in the year 2014 for production of the documents from his school/college, which contain his signatures. The said application was also dismissed on 10.03.2015, as I.A.no.844 of 2012 was closed on 8.8.2013. Then the present application in I.A.no.209 of 2015 was filed in April, 2015. The chronology of events would indicate that the defendant was not diligent in prosecuting his defence in the matter and his request for reopening I.A.no.844 of 2012, which is made when the suit is at the stage of arguments, does not, therefore, deserve consideration, in the facts and circumstances of the case.

7. Viewed thus, this Court finds that the Court below was justified in dismissing the application of the defendant.

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

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

closed.

01st June, 2016
RAR

M. SEETHARAMA MURTI, J