

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.1215 of 2016

ORDER:

This Civil Revision Petition is filed challenging the order dated 07.01.2016 in I.A.No.897 of 2015 in O.S.No.145 of 2014 in O.S.No.64 of 2005 on the file of Senior Civil Judge, Rayachoty, Kadapa District.

2. Heard and perused the material on record.

3. The said suit was filed for recovery of money. The defendant filed written statement with the contention that he never executed the suit promissory note and it did not support by consideration and it is a rank, forgery and the defendant, who is a Government employee has no necessity to borrow amount. It is the further contention that the husband of plaintiff is also a Government employee, however, he got two daughters with family burdens to get on with his meagre income and because of matrimonial alliance differences between the husband of the plaintiff and defendant, the promissory note is created by the plaintiff through her husband. This is the sum and substance in saying the suit promissory note is a forged one and plaintiff has no capacity to lend.

4. In the factual background supra, the lower Court framed the issue rightly as to whether the suit promissory note is true and supported by consideration and is enforceable or not? Ultimately, as to what result. Now, the additional issue sought for is 'whether the plaintiff has got capacity and means to lend the money or not?' Once the promissory note execution is

admitted at least the signature and disputed about passing of consideration by questioning the means then that specific issue arises. Here it is not any such case, but for total denial including execution, signature and receiving of consideration. Once such is the case, it impliedly includes needless to say, regarding means also as part of the *onus probandi* from any dispute of means requires to prove, though burden is static as laid down by the Full Bench of this Court in **G.Vasu v. Syed Yaseen Sifudin Quadri**^[1].

5. Having regard to the above, the lower Court is right in dismissing the application to frame an additional issue, as what is required as additional issue impliedly involved in the issue No.1 to decide and thereby there is nothing to interfere but for clarifying to the above effect.

6. Accordingly, the Civil Revision Petition is dismissed. No costs.

7. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-04-2016

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^[1] AIR 1987 AP 139