

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3773 of 2016

ORDER:

The unsuccessful petitioner/defendant filed this revision under Article 227 of the Constitution of India against the orders dated 15.03.2016 of the learned Junior Civil Judge, Kollapur, passed in I.A.No.318 of 2015 in O.S.No.81 of 2011 filed under Section 65 of the Indian Evidence Act requesting to receive on file the photostat copy of the document dated 24.04.2011 along with application dated 21.04.2011 and permit the defendant to lead secondary evidence.

I have heard the submissions of Sri V.Hanmantha Rao, learned counsel appearing for the petitioner/defendant and Sri K.Jaganmohan Reddy, learned counsel appearing for the respondent/plaintiff.

I have perused the material record.

The plaintiff filed the suit against the defendant for recovery of money on the basis of a promissory note. The defendant is resisting the suit. While the suit is pending, the defendant filed the subject application. The case of the defendant in support of the request in the present application is that in his written statement, apart from the other defences, he has taken a specific defence that on 24.04.2011, the Police of Kollapur called him, Madhava Reddy, who is the husband of the plaintiff, and others to the Police Station because the said Madhava Reddy had managed the Police and that at the Police Station, he was threatened and a document dated 24.04.2011, to the effect that he obtained crop loan of Rs.1,75,440/- from Madhava Reddy and that he would repay the same on 31.05.2011 to the said Madhava Reddy in the Police Station before the Sub-Inspector, was obtained and that the said document was scribed by Head Constable, Mohammed Hussain of the said Police Station, and that the said

original document is in the custody of the plaintiff and that the defendant was furnished a copy of the same and that despite a notice issued to the plaintiff, the said document is not produced and, therefore, the defendant is obliged to file the copy of the same seek permission to lead secondary evidence. The case of the plaintiff is that the version alleged by the defendant in his written statement and in support of the present application is false and that neither the plaintiff nor her husband ever obtained any such alleged document from the defendant and therefore, the question of the defendant seeking the plaintiff or her husband to produce the said document does not arise and that there was also exchange of notices prior to the suit and that sufficient evidence is already adduced in the suit and that photostat copy of the alleged document cannot be marked and that the petition is intended to drag on the proceedings.

The trial Court, having adverted to the provision of Section 65 of the Indian Evidence Act, dismissed the petition *inter alia* holding that the requirements of the provision of the said section of law are not satisfied and that it is for the defendant to lead independent evidence to prove his defence and that from the document that is intended to be filed, it is not clear as to who were Police officials that were present at the time of execution of the alleged document and what are the designations of the said Police Officers, if any, present at the time of the alleged execution of the alleged document.

Aggrieved thereof, the defendant preferred this revision.

The learned counsel for the defendant, while reiterating the case of defendant, which is already stated supra, would submit that the trial Court ought not to have examined the probative value of the document at the time of considering an application filed seeking permission to file photostat copy and adduce secondary evidence and that the defendant had satisfied the requirements of law and, therefore, the trial Court ought to have permitted the defendant to

adduce secondary evidence. *Per contra*, the learned counsel for plaintiff, while reiterating the case of plaintiff, which is also stated *supra*, would submit that the very reading of the alleged document would show that it is addressed to the Sub-Inspector of Police, Kollapur, and that the recitals of the document would reflect that the document is not with the plaintiff and that the defendant had not taken any steps to summon the said document from the Police and that the defendant is not entitled to request the Court to permit him to adduce secondary evidence, when necessary steps were not taken to first secure the original,.

I have given earnest consideration to the facts and submissions.

Whether the document is with the plaintiff or with the Sub-Inspector of Police, Kollapur, viewed either way, it cannot be said that the defendant is having possession of the original document. Therefore, the defendant is entitled to make a request to the trial Court to permit him to mark the photostat copy of the document and lead secondary evidence. However, as the document itself reflects that it is addressed to the Police officer, the defendant ought to have first taken steps to summon the Police officer/Station House Officer, Kollapur Police Station, to produce the original of the document and then ought to have sought permission to lead secondary evidence either on the failure of the Police Officer to produce the document or on the Police Officer submitting to the Court that the original was given to the plaintiff. Be that as it may, though it is for the defendant to lead independent or other evidence also, the trial Court was not justified in forming an opinion that the document may not be helpful to the defendant even without affording the defendant the opportunity of adducing secondary evidence. On the grounds that the document is a photostat copy and that it is not of truthful veracity, the request for production of the photostat copy of the document as secondary evidence cannot be refused provided that the legal and procedural requirements are duly complied with and are satisfied. Moreover, a plain reading of the provision

of law would indicate that the copies made from original by mechanical process, which in themselves insure the accuracy of the copy, are covered by the provision of law. On the above analysis, this Court is of the considered view that the revision petition can be disposed of with appropriate directions.

In the result, the revision petition is dismissed, however, reserving liberty to the defendant to file an application before the trial Court for summoning the original of the subject document from the Police Station, Kollapur, and then renew his request for permission to file the copy of the document and lead secondary evidence, either on the failure of the Police Officer to produce the document or on the Police Officer submitting to the Court that the original is given to the plaintiff. It is made clear that if any such application comes to be filed, the trial Court shall dispose of the same afresh and on its merit and in strict accordance with the procedure established by law, however, after giving an opportunity of hearing to the plaintiff. No costs.

Pending miscellaneous applications, if any, shall stand closed.

28th October 2016

ajr

M.SEETHARAMA MURTI, J