

**IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADERSH**

Civil Revision Petition No.3469 of 2017

Between:

M/s. Lokesh Foundaries Pvt. Ltd.,
Represented by its Managing Director,
Sri Bayana Venkata Rao, S/o Paidiah, Nidamanuru
Vijayawada

... Petitioner

Vs.

- 1) M/s. Varun Motors, represented by its Proprietor,
Sri Vallurupalli Prabhu Kishore, S/o late Kesava Rao
Chowdary, Hindu, aged about 51 years, Bajaj Circle,
M.G. Road, Vijayawada.
- 2) State Bank of India, represented by its Assistant
General Manager, Patamata, Vijayawada.

ORDERS PRONOUNCED ON : 06-09-2017

HON'BLE SRI JUSTICE : **V. RAMASUBRAMANIAN**

1. Whether Reporters of local
Newspapers may be allowed to see
the Judgments? :
2. Whether the copies of judgment
may be marked to Law Reporters/
Journals?
3. Whether their Ladyship/Lordship
wish to see the fair copy of the
judgment? :

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

+ Civil Revision Petition No.3469 of 2017

% 06-09-2017

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M.G. Road, Vijayawada.

2) State Bank of India, represented by its Assistant
General Manager, Patamata, Vijayawada.

... Respondents

! Counsel for the Petitioner: Mr. S. Satyanarayana Prasad,
Senior Counsel

Counsel for Respondents 1 to 4: Mr. Vedula Venkata Ramana,
Senior counsel

< Gist:

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**Civil Revision Petition No.3469 of 2017****ORDER:**

Aggrieved by an order passed by the trial Court, at the instance of the plaintiff in a suit for specific performance, directing the second defendant-bank to produce certain documents, the 1st defendant has come up with the present revision.

2. Heard Mr. S. Satyanarayana Prasad, learned senior counsel for the petitioner/1st defendant and Mr. Vedula Venkata Ramana, learned senior counsel appearing for the 1st respondent/plaintiff.

3. The 1st respondent herein filed a suit in O.S.No.50 of 2007 for specific performance of an agreement of sale purportedly entered into between the 1st respondent company and the petitioner herein on 21.06.2005. It was recorded in the said agreement of sale that the total sale consideration would be Rs.2,50,00,000/-; that the 1st respondent-plaintiff paid a sum of Rs.50.00 lakhs in cash as advance at the time of execution of the agreement of sale; that the 1st respondent would also pay a sum of Rs.31.00 lakhs to the 2nd respondent/2nd defendant-bank, by the end of June 2005 in a no lien account; and that since the petitioner had dues to be paid to the 2nd respondent Bank, for the settlement of which, a one time proposal was being worked out, the first respondent/plaintiff should pay the balance of sale consideration within 6 months from the date of the Bank issuing a letter in this regard.

4. The petitioner/1st defendant filed a written statement completely denying the execution of the agreement of sale. The denial was total without the winking of the eye. But nevertheless, the signatures found in the suit agreement of sale was admitted by the petitioner. In paragraph 32 of the written statement the petitioner claimed (i) that the suit agreement of sale is a fabricated document, (ii) that just for enabling the petitioner to negotiate with the Bank for the OTS proposal, the first respondent/plaintiff kept a deposit off Rs.31 lakhs with the Bank on the understanding that the petitioner would repay the same with interest at 12% per annum; (ii) that at that time many signatures were obtained in blank stamp papers and those signed blank stamp papers had been made use of by the 1st respondent-plaintiff to fabricate an agreement of sale and to institute a suit for specific performance; and (iii) that the Managing Director of the petitioner company did not have the authority to enter into any agreement of sale. ***Curiously, it was the Managing Director of the petitioner who signed the written statement, calling the suit agreement of sale as fabricated and denying his own authority to execute an agreement of sale.*** Though I am tempted to comment upon such a defence taken by the petitioner, I refrain from doing so, since it may have a bearing upon the outcome of the suit.

5. In the light of such a stand taken by the petitioner/1st defendant in its written statement, the 1st respondent-plaintiff filed an application under Rule 129 (1) of the Civil Rules of Practice, in I.A.No.252 of 2015 praying for summoning from the Bank, the entire correspondence relating to One Time Settlement proposal between

the petitioner and the Bank. The said application was allowed by the trial Court, by an order dated 1-6-2005, but the said order was set aside by a learned Judge of this Court in C.R.P.No.2192 of 2015 by an order dated 16-09-2016. But the learned Judge thought fit to remand the application back to the trial court for a fresh disposal, on the short ground that certain technical aspects had not been considered by the trial Court before allowing the application.

6. Therefore, the application was again taken up for hearing by the trial Court and by an order dated 05-07-2017, the trial Court once again allowed the application. Challenging the said order, the 1st defendant has come up with the above revision once again.

7. Assailing the order of the trial Court, it is contended by Mr. S. Satyanarayana Prasad, learned senior counsel for the petitioner:

(a) that the trial Court has virtually overruled the order of this Court in C.R.P.No.2192 of 2015 by allowing the application once again, taking advantage of the fact that the application was remanded for fresh disposal;

(b) that under the Bankers' Books Evidence Act, 1891, a certified copy of any entry in a Bankers' Book shall be received as *prima facie* evidence and hence, the Court below ought not to have allowed the application for the production of original document without following the procedure prescribed by the said Act;

(c) that under Rule 129(3) of the Civil Rules of Practice and Circular Orders of the State of Andhra Pradesh/Telangana, no Court shall issue summons unless it considers the production

of the original necessary and unless it is satisfied that the application for a certified copy has been duly made, but has not been granted; and

(d) that when the bank itself is a defendant to the suit, the trial Court could not have directed the party to a proceeding to produce a document.

8. I have carefully considered the above submissions.

Contention No.1:

9. The first contention of the learned senior counsel for the petitioner is that by allowing the application for summoning the production of the documents, the trial Court has virtually overruled the order of this Court in C.R.P.No.2192 of 2015.

10. But I do not think so. The first order of the trial Court allowing the application under rule 129 of the Civil Rules of Practice was set aside by this Court in C.R.P.No.2192 of 2015, only on a technical ground that the legal parameters were not considered. This Court did not find fault with the order of the trial Court on merits. If it had done so, the matter would not have been remanded back to the trial Court for a fresh consideration.

11. Paragraphs 11 and 12 of the order in C.R.P.No.2192 of 2015, which constitutes the reasoning portion of the order, reads as follows:

“11. In this factual backdrop the plaintiff filed an application covered by the impugned order passed in I.A. No. 252 of 2015 before the lower court referring to Rule 129 C.R.P to produce the documents referred in the notice to produce under Order XII Rule 8 C.P.C with additional documents, if any. In fact, there is a procedure prescribed by said Rule,

which need to be followed before seeking documents from public office to produce as laid down by the two expressions of this court (supra). The pertinent question to consider is whether the procedure contemplated by Rule 129 C.R.P is followed or not. The provisions of the Bankers' Books Evidence govern the bank to grant any certified copies of the documents, unless those are of any confidentiality saved from production under the Act or under the Right to Information Act and that also require to determine. Once the documents sought for production are with the party to the suit and not from a third party to the suit, even to summon as a witness invoking Order XVI Rule 1 or Rule 6 C.P.C does not arise. Thereby the submission of the learned counsel for the plaintiff of the application before the court below can be treated as under Order XVI Rules 1 & 6 is not tenable. No doubt, Order XVI Rule 7 C.P.C enables the court to call for production, on its own, anybody of any document as a court witness, which is virtually within the power of the court contemplated by Section 165 of the Evidence Act. The trial court did not consider any of the above aspects while passing the order, even to treat the application as part of interrogatories contemplated by Order XI C.P.C, showing that the documents in the custody of the party to be produced and be sought for production under Order XI Rule 14 C.P.C.

12. Having regard to the above, the impugned order per se since unsustainable, same is set-aside and remanded to the lower court to decide afresh and by left open the contentions raised by the parties to raise before the lower court and the lower court therefrom shall determine the application by considering the same as filed under correct provision from prayer in the petition is criteria to determine as to within the four corners of which of the provisions of law, the petition can be entertained to decide, from mere wrong quoting of provision is no way fatal. No order as to costs."

12. The reasoning portion of the order of this Court in the first revision petition extracted above, would show that the contention now raised regarding the Bankers' Books Evidence Act, 1891 and

Rule 129 of the Civil Rules of Practice were also raised there, but the learned Judge did not uphold those contentions finally for setting aside the order on merits. The learned Judge merely directed the trial Court to consider all these legal parameters. Hence, the contention that the trial Court has virtually overruled the order passed by this Court in the first revision petition, does not merit acceptance.

Contention No.2:

13. The second contention of the learned senior counsel for the petitioner is that there is a procedure prescribed by the Bankers' Books Evidence Act, 1891 and that without following the same, the Court below could not have summoned the production of the documents.

14. Before considering the correctness of the said contention, it may be necessary to have a look at the historical background of the Bankers' Books Evidence Act, 1891. After advent of the British Rule and the establishment of Banking Companies, there was a spurt in litigation involving Banking Companies. When the Banking Companies were required to produce their books of accounts and records before courts, in evidence of the transactions made by them, the Banking Companies found it difficult to update their entries in the books that were stuck in Courts. Therefore, it was decided to adopt the English Bankers' Books Evidence Act, 1879 and to make the same applicable to British India. This is how the Bankers' Books Evidence Act, 1891 was passed. The primary object of this Act was to relieve the banks of the obligations and burden of producing the

original books of accounts in Courts, so that the updating of entries in their books and their day-to-day operations were not hampered.

15. It is true that the expression “Bankers’ Books” is defined in Section 2 (3) of the Bankers’ Books Evidence Act 1891 to include all records used in the ordinary business of the bank. The definition is as follows:

“bankers’ books” include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both”

16. ***But to contend that the correspondence between the petitioner/1st defendant and the Bank in relation to a One Time Settlement proposal would come within the purview of Section 2 (3) of the Act, is to make the definition so elastic that the tensile stress of the definition cannot bear.***

17. It is needless to emphasis that the provisions of the Bankers’ Books Evidence Act are intended to safeguard the Bankers against routine directions from courts for the production of original records. Therefore, if at all anyone can invoke the provisions of the Act in their favour, it is the second respondent Bank. Interestingly, the 2nd respondent–bank in this case, did not choose to come up with a revision as against the impugned order. On the contrary, the 2nd respondent bank has actually complied with the order passed by the trial Court and the bank has also produced the records before the Court. Therefore, I do not think that the petitioner/1st defendant can take advantage of the provisions of the Bankers’ Books

Evidence Act, 1891, when the 2nd respondent-bank, which is a party to the proceeding, did not have any objection and did not mind producing the original records. It is admitted by the learned senior counsel appearing on both sides that the original records summoned by the Court below under the order impugned in this revision, have already been produced by the bank before the Court below. Hence, in a revision under Article 227 of the Constitution, the petitioner cannot take advantage of the provisions of the Bankers' Books Evidence Act, 1891.

18. In any case, the object behind the Act is to ensure that the original books of accounts are retained by the bank to enable them to carry on their day-to-day transactions without any hindrance. This object is not stultified by the production of some correspondence relating to a One Time Settlement proposal between the petitioner and the bank. The question of updating any entries in this correspondence may not arise. As a matter of fact, the learned senior counsel for the petitioner admitted that the entire dues to the bank have been settled pursuant to the OTS and the account closed. This is perhaps the reason as to why the bank did not have any objection or hesitation to produce the records, which did not require any updating. Hence, the second contention of the learned counsel for the petitioner is also rejected.

Contention No.3:

19. The third contention of the learned senior counsel for the petitioner revolves around Rule 129 (3) of the Civil Rules of Practice. Rule 129 (3) of the Rules reads as follows:

“No court shall issue such summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The court shall in every case record its reasons in writing and shall require the applicant to deposit in court, before the summons is issued, to abide by the order of the court, such sum as it may consider necessary to meet the estimated cost of making a copy of the document when produced.”

20. On the face of it, Rule 129 (3) appears to impose a twin obligation upon the Court while dealing with an application for summoning the production of documents. These obligations are: (1) that the Court considers the production of the original as necessary; and (2) that an application for a certified copy had been duly made but has not been granted.

21. Since Section 4 of the Bankers' Books Evidence Act, 1891 makes a certified copy of any entry in a Bankers' Books as prima facie evidence of the existence of such an entry, it is contended by the learned senior counsel for the petitioner that the 1st respondent ought to have applied for a certified copy of the records to the bank and that only upon the failure of the bank to furnish the certified copy, the 1st respondent could have sought the production of the original.

22. In my considered opinion, the above contention of the learned senior counsel is fallacious. **Rule 129 of the Civil Rules of Practice deals with production of records in the custody of a Public Officer other than a Court.** The expression “Public Officer” is not defined in the Civil Rules of Practice. However, Rule 2 (n) of the Civil Rules of Practice makes it clear that “all other expressions used in the Civil Rules of Practice shall have the respective

meanings prescribed by the Code or the General Clauses Act, 1897.”

23. The expression “Public Officer” is not defined in the General Clauses Act, 1897. But, Section 2 (17) of the Code of Civil Procedure defines the expression “Public Officer” as follows:

“Public officer” means a person falling under any of the following descriptions, namely:-

- (a) every Judge;
- (b) every member of an All-India Service;
- (c) every commissioned or gazetted officer in the military, naval or air forces of the Union while serving under the Government.
- (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the court, and every person especially authorized by a Court of Justice to perform any of such duties;
- (e) every person who holds and office by virtue of which he is empowered to place or keep any person in confinement;
- (f) every officer of the Government whose duty it is, as such officer, to prevent offences to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
- (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
- (h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty”

24. The Manager of a Bank, in whose custody the correspondence relating to one time proposals lie, will not come within any one of the clauses (a) to (h) of Section 2 (17) of the Code of Civil Procedure, so as to make him a Public Officer within the meaning of Rule 129 of the Civil Rules of Practice.

25. It must be remembered that for the purpose of the Indian Penal Code, the Prevention of Corruption Act and various other enactments including the Banking Regulation

Act, a banker may be a “Public servant”. The expressions “Public servant” and “Public officer” are not to be cocktailed with each other. The definition of the expression “Public servant” available in the Prevention of Corruption Act, Indian Penal Code etc., cannot be invoked while giving a meaning to the expression “public officer”, appearing in Rule 129 of the Civil Rules of Practice, especially in view of Rule 2 (n) of the Civil Rules of Practice read with section 2(17) of the Code. Once it is clear that the Manager of the bank having custody of the correspondence relating to one time settlement proposal of a borrower, is not a public officer, within the meaning of Rule 129 read with rule 2 (n) and section 2(17) of CPC, then it follows as a corollary that rule 129 itself will have no application to the petition for summoning the production of a document in the custody of a Bank Manager.

26. The entire scheme of Rule 129 of the Civil Rules of Practice makes it clear that the same is primarily intended to be applied to the officers of the Registration Department, Revenue Department, Legislative Assemblies and Legislative Councils and other Government departments.

27. A more fundamental distinction between the certified copies of public documents dealt with by Rule 129 and certified copies dealt with by Bankers’ Books Evidence Act, 1891 has to be kept in mind. Whenever a certified copy of a public document is issued by a Registrar of Assurances or a Tahsildar, the officer issuing the same merely certifies the copy to be a true copy of the original. The public authorities, who issue certified copies of

documents, do not certify that the contents of those documents are beyond question. They merely certify that the copy issued by them is a verbatim reproduction of the original.

28. But a certified copy issued by a bank under the Bankers' Books Evidence Act, actually certifies the correctness of the entries that are reproduced in the copy. The expression "certified copy" is defined in Section 2 (8) of the Bankers' Books Evidence Act, 1891 as follows:

"certified copy" means when the books of a bank,—

[2A. Conditions in the printout.

— A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:—

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and
(b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of—

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect unauthorised change of data;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electromagnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(F) the mode of identification of such data storage devices;

(G) the arrangements for the storage and custody of such storage devices;

(H) the safeguards to prevent and detect any tampering with the system; and

(I) any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.

29. A careful look at the definition portion extracted above would show that whenever a certified copy is issued by a bank, the same is supposed to contain a footnote to the effect (1) that it is a true copy of such entry; (2) that such entry is contained in one of the

ordinary books of the bank and was made in the usual and ordinary course of business; and (3) that such book is still in the custody of the bank.

30. Another important distinction between the certified copies of documents kept in the custody of a Public Officer other than a Court and the certified copies of the entries made in the books of a banker is that in the case of the former, the same may relate a document to which the Public Officer may not be a party. A Sub-Registrar of Assurance is never a party to any sale deed. But he is supposed to keep a record of the transactions and the certified copies issued by him are of documents to which he is not a party. But when a banker issues a certified copy, it is in relation to an entry to which the bank is a party. Therefore, it is clear that Rule 129 (3) has no relevance to the documents sought for by the 1st respondent in his case from the 2nd respondent-bank. But unfortunately, the first respondent indicated their application as one filed under Rule 129. However, it is settled law that the quoting of the wrong provision, will not divest the court of its power to treat the application under the correct provision. In any case, this court has already directed in Para 12 of its order in C.R.P.No.2192 of 2015 to treat the petition as one filed under the correct provision. Therefore, my conclusion that Rule 129 of the Civil Rules of Practice has no application to the petition filed by the first respondent, will not entitle the petitioner to succeed by default.

31. In fact, Order XVI Rule 6 of the Code empowers the court to summon “**any person**” to produce a document without being

summoned to give evidence. The second part of Order XVI, Rule 6 states that any person summoned merely to produce a document shall be deemed to have complied with the summons once he has caused the document to be produced. The second respondent has done this and the provisions of Order XVI Rule 6 have worked themselves out in this case. Therefore, the objections raised by the petitioner cannot but be construed only as a dilatory tactic or as a ruse to prevent the truth about the execution of the suit agreement of sale coming out. Hence the 3rd contention is also rejected.

Contention No.4:

32. The fourth contention of the learned senior counsel for the petitioner is that when the bank itself is a party to the proceeding, it is not correct on the part of the Court below to summon the production of the documents in their possession.

33. But, I do not think that the petitioner is entitled to raise this contention. Order XVI, Rule 6 uses the expression “**any person**”. The rule that a party to a proceeding cannot be compelled to produce a document in their possession, is intended to protect every party to a litigation against being compelled to produce any incriminating material against themselves. But in this case the documents sought, are not incriminating material against the 2nd respondent-bank. In fact, no relief is sought by the plaintiff as against the Bank in the suit. The Bank is only a formal party to the suit. This is why, the Bank has not come up with any revision. Therefore, the petitioner cannot raise this contention.

34. One last contention raised by the learned senior counsel for the petitioner is that an application for summoning the production of a document should be devoid of vagueness and that it should describe the document sought to be summoned with precision and accuracy. Since the petition filed by the 1st respondent contained a reference to “correspondence” without specifying the date, nature etc., of the same, it is contended by the learned senior counsel for the petitioner that the application ought not to have been allowed.

35. But the above contention does not merit acceptance. The party, who filed the application, knew what they wanted. The 2nd respondent against whom the order has been passed also understood what was summoned and they have produced the summoned documents. If at all any one could have gone to Court and objected to a vague prayer to summon the production of unspecified documents, it was the 2nd defendant. But the 2nd defendant has actually produced the documents summoned by the Court. Hence, this objection is also to be overruled.

36. As rightly contended by Mr.Vedula Venkataramana, the learned Senior Counsel for the first respondent herein (plaintiff), the defence taken by the petitioner/first defendant in the suit is one of total denial. According to him, it is a case of attempting to hide huge a pumpkin in a handful of grains. As per the written statement of the petitioner, the suit agreement of sale was a fabricated document, prepared on blank signed stamp papers given by the petitioner at the time when the plaintiff deposited Rs.31 lakhs with the Bank in a ‘no lien’ account for considering the one time proposal. In the light of

such a stand taken in the written statement, the first respondent/plaintiff was right in seeking the file relating to the OTS proposal and the correspondence, as the same would bring out the truth about the suit agreement of sale. After all, the endeavour of every court should be to find out the truth, to enable the court to render justice. The summoning of the documents in question, in my considered opinion, would certainly enable the court to arrive at the truth and I do not know whether the petitioner is afraid of facing it. Therefore, I find absolutely no reasons to interfere with the order of the court below.

37. In fine, I find no merits in the revision petition and hence, it is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 06-09-2017

Ksn



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.3469 of 2017



6th September, 2017

Ksn.