

THE HON'BLE SRI JUSTICE S.V.BHATT
CIVIL REVISION PETITION No.4796 of 2016

ORDER:

Heard Mr C.B.Adarsh Kumar for petitioner and Mr Jayasankar Reddy for the sole respondent.

The defendant in O.S.No.97 of 2015 is the revision petitioner. The petitioner filed I.A.No.1326 of 2016 for the following prayer.

“to send the schedule document to expert as the Court thinks it necessary and expedient directing expert to inquire into such ambiguity at year portion by comparing the available letter ‘4’ at amount portion at top and middle of Ex.A.1, suit promissory note, and report thereon.”

The case of petitioner is that suit promissory note was materially altered as ‘2014’ from ‘2011’. Therefore, the defendant to ascertain whether the date of execution is materially altered or not filed the instant application. The learned Trial Judge rejected the prayer firstly on the ground that trial has commenced; evidence of plaintiff was closed; and, evidence of defendant is commenced. The learned Trial Judge further observes that, under Section 73 of the Indian Evidence Act, the Court can compare the signatures along with admitted signatures; the petition is filed to drag on the suit; and dismissed the petition.

The reasons of the Trial Court are briefly referred and this Court is compelled to observe that the learned Trial Judge has not appreciated the purpose for which the instant application is filed by revision petitioner. The

defence of the revision petitioner is that the promissory note is materially altered and therefore the suit claim is not maintainable or barred by limitation. As the petitioner wants examination of alleged material alteration, dismissing the application by observing that the signature will be compared by the Court, under Section 73 of the Indian Evidence Act, is unsustainable. In a case where material alteration is pleaded, consideration of issue has different perspective. Even assuming that the defendant has accepted execution of suit promissory note, this Court is of considered view that the basic fact-in-issue is not properly appreciated by Trial Court while dismissing the application. The reasons assigned are not convincing or tenable.

Hence, the order impugned in the revision is set aside. The matter is remitted to the Trial Court for disposal in accordance with law and facts and circumstances of the case. The Trial Court is directed to pass orders in I.A.No.1326 of 2016 within four weeks from the date of receipt of a copy of this order.

The Civil Revision Petition is allowed accordingly.

Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

S.V.BHATT, J

Date:24.01.2017
 usd

