HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1616 OF 2017

ORDER:

Heard learned counsel for the petitioner and learned counsel for the respondent.

The petitioner is defendant in O.S.No.156 of 2013 on the file of the Senior Civil Judge, Chirala, Prakasam District. The suit was filed for recovery of money on the basis of the suit promissory note. When cross-examination of P.W.1 was to be undertaken, the defendant filed I.A.No.199 of 2017 for sending the suit promissory notes to the India Security Press, Nasik Road, Maharashtra so as to prove that the revenue stamps affixed on the said suit promissory notes are of the year 2005, but not of the year 2011.

A counter affidavit was filed stating that initially the petitioner was set *ex parte* for non-filing of the written statement on 14.03.2014 and he filed I.A.No.610 of 2014 to set aside *ex parte* order and the same was allowed on 25.04.2014. When the suit was posted to 11.09.2014 for cross-examination of P.W.1, the petitioner did not cooperate, and an *ex parte* order was passed on 21.10.2014 and posted the matter for hearing of the plaintiff to 31.10.2014. At that stage, the petitioner filed I.A.No.2392 of 2014 to set aside the *ex parte* order, dated 21.10.2014 and the said application was allowed on payment of costs of Rs.200/- and also on a condition to cross-examine P.W.1 by 03.12.2014. He failed to comply with the said condition and in those circumstances, I.A.No.2392 of 2014 was dismissed and the suit was decreed on 03.12.2014. When the plaintiff filed E.P.No.7 of 2015 and got attached his salary, the petitioner filed C.R.P.No.842 of 2015 and obtained stay of operation of decree and also filed I.A.No.2773 of 2014 to set aside the *ex parte* decree, dated 03.12.2014. Since the said application was allowed on 23.01.2017, the suit was posted for cross-examination of P.W.1 on

06.02.2017. At that stage, he filed the present application in order to further drag on the matter.

The trial Court dismissed the said application with the following observations.

> This Court finds no subsistence in the said submission of the petitioner/defendant. There is every possibility for using the revenue stamps of the year 2005 in the succeeding years. Considerin`g the same, even assuming that the revenue stamps affixed on the suit promissory notes are relating to the year 2005 as submitted by the petitioner/defendant, there is every possibility for using the said revenue stamps in the suit promissory notes of the year 2011. Moreover there is no legal bar to use the revenue stamps of the year 2005 in the succeeding years till it is cancelled. In view of the said circumstances, sending the suit promissory notes affixed with the revenue stamps to the Government Printing Press, Nasik, so as to prove that the said revenue stamps are of the year 2005, but not relating to the year 2011 will not serve any purpose. In the said circumstances, this Court find no merits in the petition. Hence the petition is dismissed.

The view taken by the trial Court is also a possible view but we cannot shut the evidence on possible defences of the defendant. The petitioner in his written statement made a foundation stating that the revenue stamp affixed was of the year 2005. Since the present application is in furtherance of the said averment in the written statement, the application cannot be rejected.

In the circumstances, the civil revision petition is allowed by setting aside the order of the trial Court and allowing I.A.No.199 of 2017 and the trial Court is directed to send the suit promissory notes to the General Manager, India Secruity Press, Nasik Road, Maharashtra, at the cost of the defendant, for opinion, immediately after receipt of a copy of this order. It is needless to mention here that the trial Court can go ahead with the trial.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

28.07.2017
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