

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No. 268 OF 2017

ORDER:

Vide the present petition, the petitioner seeks direction thereby setting aside order dated 26-10-2016 in I.A.No. 242 of 2016 in I.A.No. 470 of 2013 in O.S.No. 198 of 2010 on the file of the Court of I Additional District Judge, Guntur (for short, 'the Court below'), and consequently allow I.A.No. 242 of 2016 as prayed for.

The respondent-plaintiff has filed counter affidavit, whereby stated that after framing issues, the suit was posted for trial. On behalf of the plaintiff, chief affidavit of P.W.1 was filed on 14-07-2011 and on his behalf, P.Ws.2 and 3 were examined on 28-03-2012 and 18-07-2012 respectively. On behalf of the petitioner-defendant, D.Ws.1 to 4 were examined and evidence was closed long back. The suit was posted for final arguments of both parties and in the meantime, this Court granted stay. Pending trial, the petitioner-defendant filed I.A.No. 470 of 2013 to send Exs.A1 to A4 promissory notes to handwriting expert to compare the handwriting in the date columns of the promissory notes. In the said application, a detailed counter affidavit was filed contending that no such plea was taken at the earliest point of time and the same was filed only to drag on the matter.

I note in para No. 6 of the written statement, the petitioner-defendant has stated as under:

"The Defendant borrowed an amount of Rs.20,00,000/- from the plaintiff on 30-06-2007 and on the same day at request of the plaintiff, the defendant and his mother executed a Regd. Sale cum GPA nominal amount in the name of the plaintiff over the landed property of the defendant's mother for creating the security of said amount borrowed and on the same day with mutual understanding both parties are come on Agreement on each other with conditions. As per the mutual agreement both parties, subsequently on 13-07-2007 executed an agreement on each other. As per said agreement dt. 13-07-2007, the defendant shall pay the interest at 36% p.a. once in every two months and should pay the entire debt with in one year. On the same day this defendant given title deed and four signed blank promissory notes and four signed blank cheques bearing No. 0192143 to 0192146 of Andhra Bank, Kothapet, Guntur for the purpose of additional security of said amount borrowed. Thereafter, the defendant paid a seven installments as per the conditions of the agreement dt. 13-07-2007, the defendant made a partpayments, 1). 3-9-2007 Rs.1,20,000/-, 2) dt. 5-11-2007 of Rs.1,20,000/-, 3) 3-1-08 Rs.1,20,000/-, 4) dt. 6-3-2008 Rs.1,20,000/-, 5) dt. 3-05-2008 Rs.1,20,000/-, 6) dt. 5-7-2008 Rs.1,20,000/- and 7) 5-9-2008 Rs.1,20,000/- to the plaintiff, total interest paid Rs.840000/-. Lastly entire balance debt of Rs.20,94,000/- paid on 17-10-2008 to the plaintiff and on the same day the defendant demanded him to return the four blank signed pro-notes and four blank signed cheques bearing No. 0912143 to 0912146 and title deed document and to cancellation of sale cum GPA dt. 30-06-07. The plaintiff represented 'I will come to Sub-Registrar Office, Nallapadu on 20-10-2008 and bring the said documents at the time of cancellation I will handed over the said document to you (defendant)'. Believing the words and representations the defendant and his mother on 20-10-2008 at about 10-00 am, came to sub-Registrar office, Nallapadu and waiting for plaintiff till 5-00 p.m. but the plaintiff did not turn to sub-Registrar Office, Nallapadu. Immediately the defendant issued a registered legal notice to the plaintiff on 20-10-2008 and demanded him to return the four blank pro-notes and four blank cheques and to cancellation

of the Regd. Sale-cum-GPA document dt. 30-6-2007. But the plaintiff received the said legal notice and kept quiet about six months. There is no other alternative but the defendant filed the suit against the plaintiff in O.S.No. 873/2008 on the file of Prl. Senior Civil Judge, Guntur and the same is pending trial."

I further note that order dated 25-02-2014 passed in I.A.No. 470 of 2013 is as under:

"To file written arguments. Petitioner called absent. No representation. Petition is dismissed with costs."

Thereafter, the petitioner-defendant filed I.A.No. 242 of 2016 which was dismissed by passing order as under:

"Heard Respondent Counsel. Perused the petition and counter. Even though this petition is filed on 26.02.2014, after I.A.No. 470/13 was dismissed on 25.02.2014, the said I.A. was dismissed after giving ample opportunity to the petitioners herein, further he was given an opportunity to at least file his written arguments. Further, as submitted by Respondent counsel that the petitioner counsel is engaged in another court is not a ground to allow this petition. Further, the court itself has power to compare documents u/s. 73 of Indian Evidence Act, 1872. The relief sought in I.A.470/13 hence this petition is liable to be dismissed."

As reproduced above, the petitioner-defendant has taken specific plea that taking advantage of blank cheques and blank promissory notes, the respondent filed the suit before the Court for harassing him and for wrongful gain.

After hearing learned counsel for both parties and keeping in view the facts recorded above, I hereby set aside order dated 26-10-2016. Consequently,

I.A.No. 470 of 2013 in O.S.No. 198 of 2010 is restored on file. This Court expects from the Court below to decide the suit expeditiously.

The civil revision petition is accordingly disposed of. Pending miscellaneous petitions in this civil revision petition if any, shall stand closed in consequence. No costs.

SURESH KUMAR KAIT, J.

Date: 09-06-2017.

JSK

