

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CIVIL REVISION PETITION No.434 of 2017

ORDER:

This civil revision petition is filed by the petitioner/defendant against the order dated 07.11.2016 in I.A.No.469/2016 in O.S.No.14/2012 on the file of the Additional Senior Civil Judge, Srikakulam.

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

The petitioner/defendant filed I.A.No.469/2016 seeking to issue summons to one Simma Srinivasa Rao, who is admittedly the 2nd attester of the dispute promissory note, which is marked as Ex.A1. In the affidavit filed in support of the application, it was contended that one of the attesters, by name, Arasavalli Lakshminarayana, was examined as PW 2 on behalf of the plaintiff, and as he gave false evidence, the petitioner/defendant intends to examine the other attester. It is stated that when the petitioner/plaintiff requested the said Simma Srinivasa rao to give evidence on his behalf, he refused to give evidence unless he is summoned by the court and hence he filed the petition.

The objection of the respondent/plaintiff is that the application is filed without any *bona fides* and it is filed only to drag on the proceedings and that there are several laches on the part of the petitioner/defendant and as the suit is filed for recovery of money based on promissory note, examining one of the attesters to prove the document is sufficient.

The learned counsel for the petitioner/defendant submits that in order to rebut the claim of the plaintiff about the suit transaction, examination of the 2nd attester is necessary, but the learned trial court,

without appreciating the contentions of the defendant in proper perspective, erroneously rejected the request of the petitioner/defendant.

In a suit of any nature, both parties should be allowed to put in best possible evidence in support of their respective contentions for adjudicating the matter on merits. As already one of the attesters was examined as PW 2 on behalf of the plaintiff, there is nothing wrong in issuing summons to the 2nd attester who is an independent witness, who is not intending to give evidence unless he is summoned by the court.

The contention of the learned counsel for the respondent/plaintiff is that the petition is filed at a belated stage and only to drag on the matter, the defendant filed the application after closure of evidence on either side. It is further contended that the previous conduct of the defendant shows that he had been negligent in pursuing the suit, but that by itself cannot be taken as a ground for preventing the party from producing best possible evidence before the court. In the interests of justice, the application can be allowed. However, keeping in mind the fact that the application is filed at a fag end of the proceedings, the application can be allowed on certain terms.

Accordingly, the civil revision petition is allowed. The impugned order of the court below, dated 07.11.2016, passed in I.A.No.469/2016, is set aside. Resultantly, I.A.No.469/2016 is allowed, subject to condition of the petitioner/defendant paying costs of Rs.5,000/- (Rupees five thousand only) to the respondent/plaintiff, within a period of two weeks from today, and further, the petitioner/defendant shall deposit process before the court below for issuing summons to the proposed witness, and the

evidence of the proposed witness shall be completed within one month from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 06.03.2017
Dsr

