

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.4374 of 2017

ORDER:

Heard both sides.

2. It is seen that the trial Court dismissed I.A. No. 140 of 2017 on the main observation that except filing the disputed document dated 5.3.2003 and the deposition of RW-3, which is subsequent to the disputed document, the petitioner did not file any other document containing signature of RW-3 Balaji Rao. Unless any of the documents containing signature of RW-3 prior to his deposition are filed, petitioner's request to send the document to the expert for comparison cannot be considered.

3. The submission of the learned counsel for revision petitioner is that Balaji Rao (RW-3) is the General Power of Attorney (GPA) of respondents and the petitioner used to pay amounts to him. It was agreed that the interest accrued on the amounts paid by the petitioner to RW-3 shall be given setoff towards rents payable by the petitioner to respondents and in that context, RW-3 executed the disputed document dated 5.3.2003. However, during his evidence when the said document was confronted to him, he denied the execution of the said document, which necessitated the petitioner to refer the said document to the

handwriting expert. However, the trial Court dismissed the said petition on the ground that no admitted signatures of RW-3 of the relevant period were produced. Learned counsel would submit that an opportunity may be given to the petitioner to secure the admitted handwritings of Balaji Rao (RW-3) relating to the period of the disputed document to send to the expert so as to establish the case of the petitioner.

4. Learned counsel for respondents vehemently opposed the petition firstly on the submission that Balaji Rao (RW-3) had no right to collect rent on behalf of respondents and on that count, even if the disputed document dated 5.3.2003 is established to have been executed by Balaji Rao, it will not bind the respondents. His further contention is that the so called document dated 5.3.2003 was neither specifically referred in the counter filed by the petitioner in RCC No. 33/2012, nor the said document was marked as an exhibit during the evidence of the petitioner. The said document was also not confronted to the respondents during their evidence. Therefore, the document has not seen the light of the day till the evidence of RW-3. On that count also the petitioner has no right to send the document to the expert.

5. The point for determination is whether there are merits in the Civil Revision Petition to allow?

POINT:

6. As can be seen, the submission of the petitioner is that he used to pay amounts to Balaji Rao (RW-3) and interest accrued on those amounts was agreed to be given setoff towards rents payable by him to the respondents. Of course, respondents staunchly denied the authority of Balaji Rao (RW-3) to collect amounts on their behalf. In the counter filed on behalf of the respondents in RCC No. 33/2012 though the date of the document was not specifically mentioned, it was however mentioned that D. Balaji Rao, the brother of the petitioner, inducted the present petitioner as tenant being the head of the family and he used to take hand loans from the present petitioner now and then and those hand loans piled up and therefore, Balaji Rao executed an acknowledgment that there shall not be any interest on the hand loans taken by him and the present petitioner need not pay any rent to the suit shop. Thus, there is a pleading in the counter of the present petitioner though the date of disputed the document is not specifically mentioned.

7. Admittedly, the document dated 5.3.2003 was not marked as an exhibit on behalf of the present petitioner during his evidence. It was confronted to RW-3 for the first time during his cross examination. Merely because the document was not marked as an exhibit, on that ground, the request of the petitioner to send the document to an expert

cannot be refused. The observation of the trial Court is that the petitioner has not filed the handwritings and signatures of RW-3 relating to the period of disputed document. Now the submission of the learned counsel for the petitioner is that she would secure the relevant signatures and handwritings of RW-3 for the relevant period and an opportunity may be given to her. I see no ground to decline her request.

8. In the result, the Civil Revision Petition is allowed setting aside the order dated 15.4.2017 in I.A.No. 140 of 2017. Consequently, the said petition is allowed and the trial Court is directed to give an opportunity to the petitioner to produce the signatures and handwritings of RW-3 for the relevant period of the disputed document dated 5.3.2003, and send them to an expert for comparison. It is made clear that this order will not effect the right of the respondents to challenge the authority of Balaji Rao to collect amounts from petitioner.

9. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 21.12.2017
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