

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4530 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/ defendant is filed assailing the order, dated 02.06.2016, of the learned II Additional District Judge, at Eluru of West Godavari, passed in I.A.No.908 of 2015 in O.S.No.109 of 2015.

2. I have heard the submissions of *Sri T.V.Jaggi Reddy*, learned counsel for the petitioner/ defendant, (hereinafter, 'defendant'), and of *Sri K.Pamesh Babu*, learned counsel appearing for the sole respondent/ plaintiff, (hereinafter, 'plaintiff'). I have perused the material record.

3. In a suit for recovery of money in a sum of Rs.11,00,000/- with interest and costs on the foot of a promissory note, the defendant filed the aforesaid interlocutory application under Section 45 of the Indian Evidence Act, 1872, requesting the Court below to send the suit promissory note to a handwriting expert to furnish a report with an opinion as to the material alterations, if any, in the suit promissory note. The said petition was resisted by the plaintiff by filing a counter. By the impugned order, the trial Court dismissed the petition of the defendant *inter alia* observing that the case of the defendant is not that he did not execute the suit promissory note or that the plaintiff forged his signatures on the suit promissory note and that in the suit, issues are not yet framed and that unless and until the plaintiff lets in evidence on the issues to be framed, the relief sought for by the defendant in the subject interlocutory application cannot be granted.

4. At the hearing, learned counsel for the defendant would submit as follows: 'In this revision, stay orders were granted by this Court on 21.10.2016. The said orders were extended from time to time and were in force for eight weeks from 06.01.2017. Subsequently, the stay orders are not extended. Therefore, the trial Court is proceeding with the trial of the suit. Since the subject application was dismissed on the ground that the request was made at a premature stage, the defendant's request as sought for in the interlocutory application may be considered by allowing the revision petition, as by now the issues are framed and the trial is in progress.'

5. Learned counsel for the plaintiff, while supporting the orders of the Court below stated that in the facts and circumstances of the case, the trial Court is justified in passing the impugned orders.

6. I have given earnest consideration to the facts and submissions.

7. A plain consideration of the order impugned would show that the trial Court did not go into the merits of the matter insofar as the request of the defendant to send the suit promissory note to an expert for obtaining a report with an opinion as to the material alterations, if any, in the suit promissory note and that the trial Court dismissed the petition holding that the request of the defendant cannot be considered unless some evidence is let in by the plaintiff after the issues are framed in the suit. In that view of the matter, this Court is of the considered view that the revision petition can be disposed of with appropriate directions.

8. In the result, the Civil Revision Petition is disposed of accordingly and the impugned order is set aside for the limited purpose of

considering the request of the defendant now made before this Court. Consequently, liberty is reserved to the defendant to file a fresh application before the trial Court for the same relief, if he is so advised and if he so desires, however, within two weeks from the date of receipt of a copy of this order. It is needless to state that if any such application comes to be filed by the defendant, the trial Court shall give an opportunity to the plaintiff to file counter and shall dispose of the said application on merits and in strict accordance with the procedure established by law. In the event, the defendant fails to renew his request as per the liberty sought for and now granted, he shall be precluded from claiming the same relief.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

04.10.2017
RAR

M. SEETHARAMA MURTI, J

