

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.254 of 2018

ORDER:

1) Aggrieved by the order, dated 14.12.2017, passed in I.A.No.2400 of 2017 in O.S.No.178 of 2016 on the file of the Senior Civil Judge, Pithapuram, wherein an application filed under Section 45 of the Evidence Act to send the pronote dated 09.02.2015, to an handwriting expert along with the admitted signatures of the defendant, was dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The respondent/plaintiff filed O.S.No.178 of 2016, for recovery of a sum of Rs.13,82,186.00 with subsequent interest at 24% p.a. on yearly compound, against the petitioner/defendant personally and from her personal and joint family properties for the recovery of the suit amount. The averments in the plaint would show that the petitioner/defendant is said to have borrowed an amount of Rs.10,00,000/- from the plaintiff on 09.02.2015 for her marriage expenses, agreeing to repay the same with interest @ 24% per annum on yearly compound, on demand, to the plaintiff or his order. The petitioner is said to have executed a demand promissory note in favour of the respondent

on 09.02.2015. When the petitioner failed to pay the amount in spite of repeated requests, the present suit came to be filed.

3) Written statement was filed by the petitioner/defendant stating that she never borrowed any amount from the plaintiff on 09.02.2015 and that she never executed promissory note in favour of the plaintiff. It is further stated that signature on the suit promissory note does not belongs to the defendant and it is a rank forgery.

4) Pending the suit, an application came to be filed under Section 45 of the Indian Evidence Act vide I.A.No.2400 of 2017 for sending the suit promissory note dated 09.02.2015 to an handwriting expert, for comparison with the admitted signatures of the petitioner/defendant. A counter came to be filed opposing the same, stating that it was mentioned in the written statement that the defendant admitted the execution of the suit promissory note infavour of the plaintiff, the Court held that the question of sending the document to an handwriting expert would not arise.

5) After considering the rival submissions made, the trial Court dismissed the application. Challenging the same, the present Civil Revision Petition is filed.

6) Sri S.Subba Reddy, learned counsel appearing for the petitioner would submit that the finding given by the trial Court that the petitioner accepted the execution of the suit promissory note is incorrect. According to him, in the written statement it

has been specifically stated that the defendant has not executed the document dated 09.02.2015 and the signature on the said document is a rank forgery.

7) On the other hand, learned counsel for the respondent took me through some paras in the impugned order to show that in the written statement the defendant admitted the signature, as such the order under challenge warrants no interference.

8) In the plaint, the respondent herein stated that the petitioner borrowed a sum of Rs.10,00,000/- agreeing to repay the same with 24%per annum. The contents of the plaint also refer to the execution of the promissory note in favour of the respondent on 09.02.2015. In para No.5 of the written statement, the petitioner categorically stated that she never executed the pronote dated 09.02.2015 and that the signature on the pronote is a rank forgery. In para No.7 of the written statement it is stated that her marriage took place on 14.02.2015 and she is residing at Chillangi; that no bride or bridegroom would come out of the house 10 days prior to the date of marriage as per the custom. It was stated that the respondent stand as a surety to the petitioner when she got a job in a software company during the year 2007. At that time the respondent obtained the signature of the petitioner on various printed promissory notes as security for the job of the petitioner.

9) From a reading of the averments in the written statement it appears that there were some transactions between the

respondent and petitioner in the year 2007 and the respondent obtained signatures of the petitioner on various promissory notes during the said period. But the transaction in question is of the year 2015. The petitioner categorically denied the execution of the document in the year 2015. Apart from that in the cross-examination PW.1 admitted that he has no objection for sending the document to an expert for comparison. The entire case revolves around the execution of the promissory note executed by the petitioner. There is no dispute that the signature on the said promissory note can also be compared by the Court, since the entire case rests on the said document, it would be just and proper if the same is sent to an handwriting expert, to avoid any error being committed by the Presiding Officer while comparing the disputed signature with the admitted signatures.

10) Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. The trial Court is directed to send the suit promissory note dated 09.02.2017 along with the admitted signatures of the petitioner to the handwriting expert for comparison and to give opinion. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

13.04.2018
gkv

