

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition no.784 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the constitution of India, is filed by the unsuccessful petitioner/defendant assailing the order, dated 29.12.2017, of the learned VI Additional District Judge, Markapur, Prakasam District, passed in I.A.no.520 of 2017 in O.S.no.255 of 2013. Be it noted that at this stage itself that the challenge to the order is to the extent it is against the interests of the petitioner/defendant, since the trial Court partly allowed the petition. Be it also noted that the plaintiff has not assailed that part of the order allowing the application in part.

2. I have heard the submissions of *Sri Rama Rao Kochiri*, learned counsel appearing for the revision petitioner/defendant ('the defendant', for brevity); and, of *Sri K.Mohan Rami Reddy*, learned counsel appearing for the sole respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The introductory facts, in brief, are as follows:

The plaintiff brought the suit against the defendant for recovery of money in a sum of Rs.30,67,000/- on the foot of a promissory note, dated 04.12.2010. One of the suit documents is the Photostat copy of the cheque bearing no.614155, dated 04.12.2012, for a sum of Rs.25,00,000/- drawn on State Bank of India, Podili Branch. The defendant filed a written statement resisting the suit. One set of defence contentions reflects that four blank promissory notes and four blank cheques, which were issued in the circumstances stated in the defence, were not taken return by the defendant and that they

remained with the plaintiff & three other persons, whose names are mentioned in the defence, and that the suit promissory note is manipulated by making use of one of such blank promissory notes and that the defendant never executed either the cheque or the promissory note and that he simply affixed his signatures on the cheque and promissory note in the year 2008 and that the suit promissory note is not supported by any consideration and that he did not sign the suit promissory note, on 04.12.2010, as alleged in the plaint. Whereas, the case of the plaintiff is that the defendant, having borrowed the principal amount, executed the suit promissory note and that the said suit promissory note is true, valid and binding on the defendant and that the defendant is liable to pay the suit debt. After necessary issues are settled in the suit by the trial Court, both parties entered trial. During the course of trial, the defendant filed the subject interlocutory application under Order VIII read with Rule 3(A) and Section 151 of the Code of Civil Procedure, 1908, requesting to receive on file the following documents:

1. Title Deed issued by Kanakametla Tahasildar
 2. V.Venkataramana Reddy voice memory card
 3. V.Venkatarama Reddy CD-1
 4. K.Konda Reddy Memory Card – 1
 5. K.Konda Reddy CD-1
4. The case of the defendant in support of the said request is this:
- The documents filed along with the petition are very important to the case. Hence, a request is being made to receive the documents on file after condoning the delay in filing the documents and that the delay in filing the documents is neither wilful nor wanton.

5. The case of the plaintiff in his counter, in brief, is this:

The defendant did not file the documents along with the written statement. The allegations of the defendant in the affidavit filed in support of the petition are false. The petition is misconceived. Unless a proper explanation is given for filing the documents at a later stage, the defendant is not entitled to make a request for receiving the documents. There is neither an explanation offered nor were reasons assigned in the affidavit of the defendant. It is not stated as to when he secured the documents and where he kept the documents till they are filed into Court. There is no explanation with regard to the said material aspects. Further, there is no explanation as to why the documents could not be filed earlier into Court. Hence, the present petition is not maintainable and is liable for dismissal.

6. By the impugned order, the trial Court partly allowed the petition and received on file the Title Deed and Passbook issued by Tahasildar, Kanakametla, as the said documents are evidently filed to support the defence plea that the defendant is an agriculturist and he is entitled to the benefits of Act 4 of 1938. However, the trial Court dismissed the petition in so far as the other documents and refused to receive on file the other documents, which are voice Memory Cards & CDs said to be containing the voices of V.Venkataramana Reddy (the defendant) and K.Konda Reddy. The trial Court observed in its order that there is no foundation in the pleading in the written statement as regards the aforesaid documents (electronic documents) and that in the absence of reasons in support of the request for receiving the said documents on file, the said documents need not be received on file.

7. Aggrieved thereby, the defendant filed this revision.

8. Learned counsel for the defendant contended that instead of allowing the petition in part, the trial Court ought to have allowed the application in its entirety as the electronic documents, namely, CDs & Memory Cards, which contain the voices of the said persons, are necessary to substantiate the defence of the defendant; and, that if the documents are received on file, no prejudice would be caused to the plaintiff.

9. On the other hand, learned counsel for the plaintiff reiterated the case of the plaintiff, which is stated in the counter filed before the trial Court and which is already extracted supra. He further submitted as follows: 'The defendant did not file hard copies of the electronic documents to show the content in each of the CDs & the Memory Cards. The defendant ought to have reduced the contents of the said alleged documents into writing and ought to have filed the same. The defendant also did not state in his affidavit or in the grounds of revision as to what the contents of the said electronic documents are and how they are relevant for adjudication of the issues settled in the suit for determination. There is no compliance of the requirements of the provisions of the Indian Evidence Act, 1872, for receiving the electronic evidence.'

10. I have given earnest consideration to the facts & submissions.

11. In the first place it is to be noted that it is sought to be argued before this Court by the learned counsel for the defendant that certain conversations took place during the pendency of the suit and that the said conversations with V.Venkataramana Reddy (the defendant) and

K.Konda Reddy were recorded and that the Memory Cards & the CDs contain the said conversations and that the contents of the said CDs & Memory Cards support the case pleaded in the defence of the defendant and that since the conversations took place subsequent to the institution of the suit and during the pendency of the suit, there cannot be a foundation in the defence taken in the written statement and that the electronic documents containing the conversations which contain the admissions of the plaintiff and the said witness, if received on file, and are permitted to be exhibited would disclose that the defence of the defendant is true and that the plaintiff's case is not true and that therefore, the said documents are essential and required to be admitted in evidence. However, these contentions are raised for the first time before this Court without a foundation in the pleadings, that is, in the affidavit filed in support of the present application, which is filed to receive the documents on file. The said contentions are not even urged in the grounds of revision. Further, no reasons are stated in the affidavit filed in support of the interlocutory application which was filed requesting to receive the documents on file. A plain reading of the affidavit filed in support of the application would show that the application is filed in a casual manner. Since the defendant failed to plead any details, much less, the essential details as to how the CDs & Memory Cards came to light and what are the contents of the said CDs & Memory Cards and as to how the contents thereof are relevant, the plaintiff is not in a position to take a stand either way in the matter. Further, the defendant failed to comply with the provisions of the Indian Evidence Act, 1872, relating to receipt of electronic evidence. Be that as it may. In the light of the fact that the affidavit of the defendant is bereft of any reasons and also for the above assigned reasons, this Court

finds that the trial Court is justified in dismissing, partly, the petition of the defendant and in refusing to receive the CDs & Memory Cards (electronic documents) on file.

12. On the above analysis, this Court finds that there is no merit in the revision and the revision is liable to be dismissed.

13. Accordingly, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

10.08.2018
RAR

M. SEETHARAMA MURTI, J

