

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition no.783 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 08.01.2018, of the learned VI Additional District Judge, Markapur, Prakasam District, passed in I.A.no.535 of 2017 in O.S.no.13 of 2013.

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. To begin with it is necessary to take note of the introductory facts, which lead the trial Court to pass the impugned order. The said introductory facts are as under:

The plaintiff brought the suit against the defendant for recovery of money in a sum of Rs.22,41,000/- on the foot of a promissory note, dated 25.04.2010. One of the suit documents is a Photostat copy of the cheque bearing no.285864 for a sum of Rs.22,38,000/- drawn on Andhra Pragathi Grameena Bank, Podili Branch. The defendant who is resisting the suit pleaded in her written statement that the suit promissory note is forged and that she never borrowed any amount from the plaintiff under the suit promissory note and that she never executed the suit promissory note and that the signatures said to be of her on the suit promissory note do not belong to her and that on account of misunderstandings between the husband of the defendant and the

brother of the plaintiff, by name, Mandalapu Srinivas Reddy, the suit was brought by creating the suit promissory note to wreck vengeance against the defendant and her husband and that the suit promissory note is not supported by consideration and that she never signed the cheque and that the plaintiff managed to commit theft of a blank cheque from the shop of the defendant & her husband and that the defendant manipulated the same and that therefore, there is no basis for the plaintiff to make any claim in the present suit against the defendant.

4. After necessary issues are settled in the suit for trial, the 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. K.Konda Reddy CD
2. K.Konda Reddy Ration Card
3. 18-12-2009 Receipt
4. Respondent, Ramana Reddy, Shivaraju, CCDR written document
5. Respondent, K.Venkateswarlu, Shivaraju, CCKR written security proposal

5. 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 said documents on file after condoning the delay in filing the documents; and, that the delay in filing the documents is neither wilful nor wanton.

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

The documents 1 and 2 which are filed by the defendant along with the application relate to the year 2014; and, the documents 3 to 5 relate to the year 2009. The said documents are filed along with the

present petition, which is filed in the year 2017, without stating any reasons for the delay in filing the said documents. The petition is misconceived. The affidavit does not disclose any reasons either for condoning the delay or for according permission to file the documents and receive them on file. 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 she secured the documents and where she 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. In the impugned order, the trial Court observed that there is no pleading in the written statement that the suit transaction is in any way connected with the chit in CCKR Chits and Finance Private Limited and that the petitioner/defendant failed to state in her affidavit the relevancy of the documents and also as to how the said documents would substantiate her defence, and, hence, it is of the opinion that the documents are irrelevant to the suit proceeding and need not be received on file. Having so observed, the trial Court dismissed the petition of the defendant.

7. Aggrieved thereby, the defendant filed this revision.

8. Learned counsel for the defendant contended as follows: 'The trial Court ought to have allowed the application for the reasons stated in the affidavit filed in support of the application. The defendant stated

that the documents could not be filed along with the written statement and that the said documents are necessary to substantiate her defence. The trial Court was in error in making an observation in the order that there is no plea that the suit transaction is in any way connected to a chit in CCKR Chits and Finance Private Limited. The trial Court ought to have allowed the application as the electronic documents and other documents, namely, CDs and memory cards, which contain the voices of the said named persons, are necessary to substantiate the defence of the defendant. 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 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, which were available in the CDs contain the voice of

K.Konda Reddy and that the contents of the said CDs 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 admissions, 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 documents are 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 interlocutory 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 came to light and what are the contents of the CDs 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 the petition of the defendant and in refusing to receive the documents on file.

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

M. SEETHARAMA MURTI, J

10.08.2018
RAR

