

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.4740 of 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 02.08.2016 passed in I.A.No.1063 of 2016 in O.S.No.178 of 2015 on the file of Senior Civil Judge Court, Pithapuram, East Godavari District.

2. Heard the learned counsel appearing for both the parties and perused the material available on record.

3. A perusal of the record reveals that the respondent filed O.S.No.178 of 2015 against the petitioner for recovery of the suit amount basing on two promissory notes Exs.A1 and A2. After cross-examination of P.W.2, the petitioner filed the present petition to recall P.W.2 for further cross-examination. The respondent filed counter *inter alia* contending that the present petition is filed to fill up the lacunae; therefore, the petition is liable to be dismissed. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. The point that arises for consideration is: 'Whether there is any illegality, irregularity or impropriety in the impugned order?'

5. A perusal of the record reveals that P.W.2 is the husband of the plaintiff. A perusal of the record further reveals that P.W.2 is the scribe of Exs.A1 and A2 promissory notes.

6. It is the case of the petitioner that the respondent has obtained the promissory notes in the police station. It is the further case of the petitioner that the son of the petitioner and the son of the respondent are partners in the business. Even assuming but not conceding that the son of the respondent has obtained an agreement from the son of the petitioner, that aspect falls outside the purview of the suit as rightly pointed out by the trial Court. It is not the case of the petitioner that P.W.2 is one of the partners of the son of the respondent. The role of the scribe of a promissory note is very limited. The petitioner cross-examined P.W.2 at length on all aspects.

7. It is needless to say while passing orders in a petition filed under Order 18 Rule 17 CPC, the Court has to consider whether such applications are filed in order to fill up the lacunae or not. If the intention of the party is to fill up the lacunae certainly, the petition is liable to be dismissed.

8. A perusal of the record reveals that P.W.2 was cross-examined on all aspects even though he is the scribe of Exs.A1 and A2. Even if there is any agreement between the son of the petitioner and the son of the respondent, that falls outside the purview of the present suit. The remedy available to the respondent is otherwise. The trial Court considered all these aspects in right perspective and dismissed the petition. This Court shall not lightly interfere with the discretionary orders passed by the trial Court unless there is any error manifest on the face of the record. The trial Court has assigned reasons

much less cogent and valid reasons to its findings while dismissing the petition. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the orders of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

30.11.2018
Rns

T.SUNIL CHOWDARY, J



