

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3288 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 04.07.2017 passed in I.A.No.111 of 2017 in I.A.No.476 of 2015 in O.S.No.27 of 2012 on the file of the Court of the Senior Civil Judge, Hindupur.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the petitioner filed I.A.No.111 of 2017 to restore I.A.No.476 of 2015 in O.S.No.27 of 2012. The respondent filed counter *inter alia* contending that the petition is not maintainable either on facts or in law. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. The point that arises for consideration in this revision is:

Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court?

5. A perusal of the record reveals that the respondent filed O.S.No.27 of 2012 on the file of the Court of the Senior Civil Judge, Hindupur, against the petitioner for recovery of the suit amount basing on the promissory notes dated 10.02.2009, 15.05.2009 and 20.10.2009. The petitioner filed written statement *inter alia* contending that the promissory notes dated 10.02.2009, 15.05.2009 and 20.10.2009 are forged documents. During pendency of the suit, the petitioner filed I.A.No.476 of 2015, under Section 45 of Indian Evidence Act, to send the disputed signatures of the petitioner on the suit promissory notes with his admitted

signatures to RFSL for comparison. After hearing both parties, the trial Court allowed I.A.No.476 of 2015. The trial Court directed the petitioner to deposit an amount of Rs.10,000/- on or before 26.02.2016. The petitioner has taken a Demand Draft for an amount of Rs.10,000/-. For one reason or other, the petitioner has taken the demand draft to the wrong address of RFSL. Again on 27.01.2017, the petitioner has taken the Demand Draft for an amount of Rs.3,000/-. On 06.03.2017 the trial Court dismissed I.A.No.476 of 2015 for non-compliance of the order. The petitioner filed I.A.No.111 of 2017 to restore I.A.No.476 of 2015. The trial Court dismissed the application on the ground that the question of restoring of I.A.No.476 of 2015 does not arise. A perusal of the record clearly reveals that on 06.03.2017 the trial Court dismissed I.A.No.476 of 2015. No doubt, I.A.No.476 of 2015 was dismissed for not taking of the appropriate steps by the petitioner. In such circumstances, the only remedy available to the petitioner is to file an application to restore I.A.No.476 of 2015. A perusal of the record reveals that the petitioner has taken the Demand Drafts for an amount of Rs.13,000/- of course with wrong address. Merely because the petitioner has taken the demand drafts with wrong address that itself is not a ground for dismissal of the restoration petition. The Court shall not insist on technicalities at the cost of substantial justice. If I.A.No.476 of 2015 is not restored, it may not be possible for the petitioner to substantiate the stand taken by him in the written statement. The trial Court allowed I.A.No.476 of 2015 in order to resolve the issue involved in the suit.

6. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the revision.

7. In the result, the Civil Revision Petition is allowed setting aside the order dated 04.07.2017 passed in I.A.No.111 of 2017. Consequently, I.A.No.111 of 2017 in I.A.No.476 of 2015 in O.S.No.27 of 2012 is allowed. In consequence thereof, I.A.No.476 of 2015 in O.S.No.27 of 2012 on the file of the Court of the Senior Civil Judge, Hindupur, is allowed. The petitioner is hereby directed to comply the order of the trial Court passed in I.A.No.476 of 2015 within a period of three (3) weeks from today, failing which, the trial Court is at liberty to proceed in accordance with law. The trial Court is further directed to dispose of O.S.No.27 of 2012 as expeditiously as possible. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 08.10.2018

Note: Issue CC in three days.

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