

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.2232 and 2255 of 2018

COMMON ORDER:

1) C.R.P.No.2232 of 2018 is filed, aggrieved by the order dated 28.02.2018, passed in I.A.No.326 of 2017 in O.S.No.644 of 2015 on the file of the II Additional Senior Civil Judge, Kakinada, wherein an application made under Order VIII Rule 1-A read with Section 151 of C.P.C. praying to receive the document ie. Certified copy of registered non-possessory mortgage deed 15.06.2015 executed by the defendant in favour of Karri Satyanarayana Reddy, as exhibit, was dismissed. C.R.P.No.2255 of 2018 is filed aggrieved by an order dated 28.02.2018 passed in I.A.No.325 of 2017, wherein an application made under Section 151 of C.P.C. to recall DW.1 to mark the document, was rejected.

2) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are being disposed of by this common order.

3) The facts in issue are as under:

The respondent/ plaintiff filed O.S.No.644 of 2015, for recovery of loan advanced to the defendant by way of

promissory note. A written statement came to be filed by the defendant denying the averments in the plaint with regard to taking loan amount, execution of promissory note etc. After completion of the plaintiff's evidence and at the stage of defendant's evidence, the defendant filed two applications, (1) for receiving the said document and (2) to recall DW.1 for the purpose of marking the said document on the ground that the said document is very essential to prove that he never took any amount from the plaintiff and that a false case has been filed against him.

4) A counter came to be filed opposing the same contending that marking of the said document will not in any way prove the case of the defendant. It is stated that the allegation that the said document was traced recently as it was misplaced at the time of filing of the written statement is far from truth. It is further stated in the counter that the document is nowhere concerned with the suit proceedings as Karri Satyanarayana Reddy is a third party to the proceedings. Having regard to the above, it is contended that there is no justification to receive the document executed in favour of Satyanarayana Reddy, who is a third party to the proceedings.

5) After considering the arguments advanced, the trial Court dismissed both the petitions. Aggrieved by the same, the present revision petitions are filed.

6) Learned counsel for the petitioner mainly submits that the trial Court dismissed the petition on a premise that there is no reference in the written statement with regard to registered mortgaged deed and that the said plea was taken for the first time in the said application.

7) Learned counsel for the respondent would submit that the trial Court rightly dismissed both the petitions as the same are filed at the belated stage and the document which is sought to be marked is executed in favour of a third party.

8) It is not in dispute that in the impugned order it is stated that the said document was not referred to in the written statement and at the stage of defendant's evidence it is sought to be marked without pleadings in the written statement about the said document. But a perusal of the written statement reflects the execution of registered mortgage deed in favour of Karri Satyanarayana Reddy as security for the loan taken by him from Karri Satyanarayan Reddy. At the same time the impugned order also states that the said document, which is now sought to be marked, has no relevancy to the case since it does not any way helpful to

prove the case of the defendant as the same was executed in favour of third party.

9) As stated earlier, there is a reference to the execution of the said document by the defendant in favour of Karri Satyanarayana Reddy in the written statement. Therefore, marking of the said document has no relevancy to decide the dispute, more so, when the defendant is not disputing the signature on the suit pronote. If really he is disputing the fact of taking hand loan from the plaintiff, he has to disprove the same in some other mode and not by marking the registered mortgage deed which was executed in favour of a third party.

10) When the suit for recovery of money is based on a pronote, the proper approach for the petitioner to disprove the theory of loan taken by him from the plaintiff would be through some other means and not by way of getting this document marked. Even if the said document is received and marked, it does not in anyway help to prove that he has not taken a loan basing on the promissory note from the plaintiff.

11) Therefore, in the circumstances of the case, I see no reason to receive the document executed in favour of a third party in a suit based on pronote, moreso, when the document was executed in favour of third party to the suit proceedings.

12) For the aforesaid reasons, the present Civil Revision Petitions sans merit and the same are accordingly dismissed.

No order as to costs.

13) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

13.07.2018
gkv

