

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2439 of 2018

ORDER:

The unsuccessful petitioner – defendant filed this revision, under Article 227 of the Constitution of India, assailing the order, dated 16.02.2018, of the learned Senior Civil Judge, Addanki, passed in IA.No.109 of 2018 in OS.No.34 of 2015.

2. I have heard the submissions of Sri Venkateswarlu Chakkilam, learned counsel appearing for the revision petitioner – defendant. Though the respondent – plaintiff is served with notice, he did not enter appearance. I have perused the material record.

3. The introductory facts, which are necessary for disposal of this revision petition, in brief, are as follows: -

The plaintiff brought the suit against the defendant for recovery of money on the foot of a promissory note, dated 22.04.2013. The defendant having filed a written statement is contesting the suit. In the written statement, the defendant pleaded that the suit promissory note is forged and that the plaintiff has no capacity to lend a huge sum of Rs.6 lakhs, which is stated to be the principal amount, under the alleged suit promissory note. During the course of cross-examination of PW1 done on various aspects including his financial resources and financial capacity for lending such a huge amount, it appears that the plaintiff-PW1 stated about some of his assets and financial resources. He also stated that he owned dry lands and that he raised Mirchi, Cotton and other dry crops in the said dry lands; that he secured the amount by selling Bengal Gram about 20 days or one month prior to the lending of the

amount; that he received the cash by sale of such Bengal Gram crop; that he sold some portion of the Bengal gram through mediators having stored in a cold storage viz., Lavanya Cold Storage, Guntur, but the receipt related to the said transaction is misplaced; and that he cannot say what quantity of Bengal Gram was stored in the said Cold Storage. Pursuant thereto, certain suggestions were given to PW1 that he has no means or lands and that he never raised any crops and that his contention that he kept/stored Bengal Gram in Lavanya Cold Storage and sold the same and got the amount that was lent to the defendant under exhibit A1 are false and that he has no financial capacity to lend such huge amount to the defendant.

3.1 In this backdrop, the defendant filed the afore-stated Interlocutory Application under Order XVI Rule 6 read with Section 151 of the Code requesting to issue summons to the Managing Director of the said Lavanya Cold Storage to produce the stock registers of the cold storage for the years – 2012-13 and 2013-14 showing the quantity of the Bengal Gram, if any, stocked by the plaintiff in the said cold storage and the sale of said stock, which was stocked in the cold storage, and to give evidence.

3.2 The plaintiff resisted the said application by filing a counter, *inter alia* contending that the defendant earlier filed a petition to summon the Tahasildar to produce certain records and that the said petition was dismissed; again the present petition is filed to summon the Managing Director of Lavanya Cold Storage to produce the stock registers and give evidence; that the defendant ought to have obtained copies of the registers from the said Cold Storage having resorted to the provisions of the Right to Information Act, 2005, if the defendant intended to rely upon copies of such registers; and that the

documents being sought to be summoned, even if produced before the Court, would not be helpful to the defendant to prove that the plaintiff has no capacity to lend the principal amount to the defendant.

4. On merits and by the order impugned, the trial Court dismissed the petition of the defendant. Therefore, the defendant is before this Court.

5. Learned counsel for the defendant while drawing the attention of the Court to the circumstances which lead the defendant to make a request to the trial Court to summon the Managing Director, Lavanya Cold Storage, to produce the stock/storage registers and give evidence, strongly contended that the said evidence would prove that the plaintiff is a liar and that he had no capacity to lend the amount under the suit promissory note and that the said evidence is necessary more particularly in the light of the fact that the plaintiff-PW1 stated that the receipt issued by the cold storage for the stock stored in the cold storage was misplaced by him and to disprove the alleged financial capacity of the plaintiff and to show that the plaintiff's version in the deposition is totally false. He further submitted that in the light of the fact that there is a promissory note which the defendant is contending as a forged promissory note, the trial Court, in the light of the deposition of PW1, may take a view that it is for the defendant to prove that the plaintiff has no financial capacity or financial resources to lend the amount, and that, therefore, the defendant does not want to take a chance and that the defendant wants to bring all possible evidence on record leaving no aspect of the matter in ambiguity or in doubt. He further submits that since the cold storage is a private business entity, it is not governed by the provisions of the Right to Information Act.

6. I have given earnest consideration to the facts and submissions.
7. Considering the fact that the principal amount under the suit promissory is a huge amount and the further fact that PW1 has stated that the receipt related to Bengal gram stocked in the cold storage is misplaced by him and that as it is his specific case that he sold the Bengal Gram that was stocked in Lavanya Cold storage, Guntur, and received cash and that thereafter the consideration under the suit promissory note was paid to the defendant, this Court is of the view that the ends of justice of justice would be met and the truth will surface if an opportunity is given to the defendant to summon the Managing Director or any other competent staff member or officer of the said cold storage for the purpose desired by the defendant.
8. In that view of the matter, this Court finds that the order of the trial Court brooks interference.
9. In the result, the Civil Revision Petition is allowed; and, the order impugned is set aside. As a sequel, IA.No.109 of 2018 in OS.No.34 of 2015 on the file of the court of the learned Senior Civil Judge, Addanki, is allowed. Accordingly, the trial Court shall proceed to issue witness summons to the Managing Director, Lavanya Cold Storage, Guntur, for the purpose desired by the defendant and his examination before the trial Court as a witness on the side of the defendant.

There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

07.08.2018

Vjl

