

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.5309 of 2017

ORDER

This civil revision petition under Section 227 of the Constitution of India, is filed challenging the order dated 29.06.2017 passed in I.A.No.245 of 2017 in O.S.No.631 of 2014 by the Principal Senior Civil Judge, Chittoor, in a petition filed under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act'), to refer the suit document i.e., promissory note, dated 10.11.2012, on the ground that the amount of Rs.11,000/- was materially altered as Rs.74,000/- and similarly, the amount in words was also altered from Rs.11,000/- to Rs.74,000/- erasing certain words, with pen.

2. The petition was opposed by the respondent on the ground that when the plea of material alteration was not raised in the written statement, the document cannot be referred to the handwriting expert for opinion as to its material alteration and requested to dismiss the petition. Accepting the contention of the respondent, the Court below dismissed the petition.

3. Aggrieved by the said order, the present revision is filed mainly contending that the petitioner herein filed application to receive the additional written statement raising a plea of material alteration and without deciding such application, dismissal of the application filed under Section 45 of the Act on the ground that no plea was raised in the written statement is unsustainable and prayed to set aside the order passed by the Court below

4. It is an admitted fact that the document sued upon is the promissory note dated 10.11.2012 and the petitioner herein though filed written statement did not raise the plea of material alteration which vitiates the entire transaction as per Section 87 of the Negotiable Instruments Act. But, he allegedly filed an application under Order 8 Rule 9 of CPC seeking leave of the Court to receive additional written statement raising the plea of material alteration and it is allegedly pending.

5. Filing an application under Section 151 of CPC to receive additional written statement is an irregularity and the petitioner ought to have filed an application under Order 8 Rule 9 of CPC, which deals with subsequent pleadings. Subsequent pleadings will arise in certain circumstances, but not in the present circumstances of the case. However, it is for the trial Court to decide whether the additional written statement can be received either by exercising power under Section 151 of CPC or under Order 8 Rule 9 of CPC depending upon the nature of the plea being raised and permissibility of subsequent pleadings under Order 8 Rule 9 of C.P.C. In the present facts and circumstances of the case, filing of application under Section 45 of the Act, which deals with relevancy of opinion of expert, is an irregularity. The petitioner ought to have filed an application under Order 26 Rule 10(a) of CPC to appoint any person for scientific investigation. Of course, quoting wrong provision of law is not a ground, if the petitioner is otherwise entitled for such relief.

6. Coming to the present facts of the case, the petition filed under Section 151 of CPC to receive additional written statement is pending before the Court below and on the same day, the petitioner filed the present petition under Section 45 of the Act. But, in stead of deciding both the petitions, the trial Court dismissed the petition filed under Section 45 of the Act on the ground that no such plea was raised. Therefore, dismissal of the petition on the ground that there is no plea in the written statement as to the material alteration is in accordance with law. But, disposal of a petition during pendency of the petition to receive additional written statement is an irregularity. Therefore, the order passed by the Court below is hereby set aside on this ground alone while remanding the petition to the trial Court to decide both the petitions filed under Section 151 of CPC to receive additional written statement and the petition filed under Section 45 of the Act treating the same as petition under Order 26 Rule 10-A CPC to refer the disputed document to the handwriting expert, in accordance with law on the same day.

7. In the result, the Civil Revision Petition is allowed, setting aside the order dated 29.06.2017 passed in I.A.No.245 of 2017 in O.S.No.631 of 2014 by the Principal Senior Civil Judge, Chittoor, remanding the petition to the Court below to dispose of the petition filed under Section 151 of CPC to receive additional written statement. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

22nd October, 2018
sj