

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.3307 OF 2018

ORDER:

The revision petitioner is the plaintiff in O.S.No.349 of 2011 on the file of the learned V Additional District Judge, Nellore, which was a suit for specific performance of the contract of sale dated 02.09.2011 for a consideration of Rs.32,50,000/-, stated paid thereunder Rs.28.00 lakhs on that day and agreed to pay the balance by 02.03.2012 for the immovable property covered by the plaint schedule and with averments of the defendant is postponing without performance despite demands of the plaintiff and he is trying to alienate the third-parties and the plaintiff deposited the balance sale consideration of Rs.4,50,000/- in Court. The suit was opposed by contest of the defendant saying on the alleged date of agreement the defendant was at Sub-Registrar Office, Nagpur of Maharashtra State and the alleged signatures of the defendant in the agreement are forged and fabricated.

2. The plaintiff earlier filed I.A.No.568 of 2017 for summoning the 'M' books for the period from 2011-2012 from the office of the ACB, Nagpur stating those books are with the Investigating Officer supra in investigating Crime No.203 of 2017 from the search and seizure in the office and residence of the defendant. Said I.A. was opposed and on contest ultimately allowed on 02.02.2018 to summon the 'M' books supra. It is pursuant to the earlier petition in

I.A.No.404 of 2017 filed by the defendant to send the suit agreement of sale supra to the Handwriting Expert for comparison of the disputed signatures therein with other admitted and specimen signatures, that I.A. was allowed on 07.09.2017 and what the plaintiff sought in I.A.No.568 of 2017 is the admitted signatures of the defendant in those 'M' books of contemporary relevancy to the disputed signature in question for such comparison and opinion with the disputed signature in the sale agreement of 2011 supra. The summons issued pursuant to the order dated 02.02.2018 in I.A.No.568 of 2017 supra could not be fructified in securing any 'M' books from the say by the ACB authorities of they did not seize any of such 'M' books of the period in question and they have no custody of the same and they are not in a position to furnish any such books as required by the Court for not in their custody. It is in the background I.A.No.163 of 2018 filed by the plaintiff to summon the said 'M' books which are lying with the Executive Director, Vidarbha Irrigation Development Corporation (for short, 'the VIDC'), ChinChin Bhavan, Nagpur, Maharashtra. As can be seen from the letter of the Inspector of Police, ACB, Nagpur dated 01.03.2018 of the Measurement books not seized by that office and those are not available with ACB authorities as referred supra. It was on contest I.A.No.163 of 2018 was ended in dismissal by the impugned order dated 06.04.2018. The impugned order reads that the 'M' books sought for of the years 2011-2012 from the Executive Director, VIDC supra having reproduced the contest from the disputed facts and background of the orders supra with the

say that as per contest of the defendant, the registered Sale Deed containing the signature of the defendant has been sent for and the specimen signatures of the defendant already taken by the Court pursuant to the orders in I.A.No.404 of 2017 to send along with those disputed signatures on the disputed sale agreement dated 02.09.2011 and not even admitting the signatures on the so-called 'M' books as of him. It is observed that the present application is to drag the proceedings as contended by the defendant from the factum of the suit is of 2011 and an identified one and several opportunities given disclosing from the record of efforts of the plaintiff to drag. It is same now impugned in the revision with the contest in the grounds of revision that there is no intention of petitioner-plaintiff to drag the matter and the Court having allowed the application of defendant in 2017 in the suit of the year 2011, to send the document to the Handwriting Expert as per the order in I.A.No.404 of 2017 supra, having allowed I.A.No.568 of 2017 supra to send for the 'M' books containing the signatures of the defendant of the contemporary relevancy of 2011-2012, from the very endorsement of the ACB official letter dated 01.03.2018 of not seized from VIDC, Nagpur what the plaintiff sought to is call for the same. Hence, prayed the Court to set aside the dismissal order and to allow the present revision by allowing the application before the lower Court supra.

3. Learned counsel for the revision petitioner-plaintiff reiterated the above facts, whereas the learned counsel for the respondent opposed the petition by supporting the order of the lower Court.

4. Heard both sides and perused the material on record.

5. Even from perusal of the order of the lower Court, the above facts are not in dispute and no way requires repetition. The docket of the lower Court shows the trial commenced in the suit after settlement of issues on 28.03.2012 and posted to 13.04.2012 and on 23.04.2012 exhibits A1 to A3 marked in the chief examination of the plaintiff-PW1 and the cross-examination therefrom continued from time-to-time for one reason or the other till 08.07.2013. When PW1 failed to attend with no representation, the suit is dismissed and later restored on 10.09.2014 and completed by 10.04.2015 and it was coming thereafter for further evidence of plaintiff and several adjournments including on costs granted with no progress till 27.01.2016. On 27.01.2016, the plaintiff's further evidence is closed and posted for defendant's evidence to 15.02.2016. On 13.06.2016, I.A.No.37 of 2016 of the plaintiff to reopen the plaintiff's further evidence is allowed and the chief affidavits of PWs 2 & 3 are filed and they were cross-examined ultimately by 27.01.2017. After closure of the plaintiff's evidence while it was coming for defendant's evidence, the application to record the evidence of defendant on commission filed in I.A.No.145 of 2017 that was allowed on 13.04.2017, and it was at that stage the defendant filed I.A.No.404 of 2017 to send the sale

agreement with disputed signatures to the Handwriting Expert that was allowed on contest. Leave about the other applications interlocutory in nature including to summon the Sub-Registrar with regard to original Sale Deed and that was allowed and examined as DW2 and exhibits X1 and X2 are marked on 17.08.2017, and the evidence of defendant later closed and it was coming for arguments. Later I.A.No.404 of 2017 was filed and the defendant's specimen signatures were obtained in the open Court on 15.09.2017 and after deposit of the amount of Handwriting Expert fee and charges, he was directed to file some more documents containing any admitted signatures. At that stage I.A.No.568 of 2017 of the plaintiff filed therein to send for the 'M' books from the ACB Office, Nagpur and from endorsements dated 01.03.2018 of not seized from VIDC of not available, the plaintiff sought to send from VIDC. Once those are the signatures stated contained in the 'M' books of the year 2011-2012 which are also of contemporary relevancy and even the impugned order of the lower Court shows through DW2-Sub Registrar documents summoned and marked as X1 and X2 supra not even mentioned of contemporary relevancy and that too when ordered already to call for from the ACB office. Once endorsement dated 01.03.2018 received of they did not seize from VIDC and the petition is filed to call for from the VIDC as the original signatures are of contemporary relevancy, the dismissal order of the lower Court is not sustainable. This Court on 20.07.2018 passed interim direction not to pronounce the judgment as the matter is already posted for arguments

and I.A.No.256 of 2018, about pendency of the revision and adjournment, filed by the plaintiff before the trial Court appears disposed of.

6. Having regard to the above and in the result, this Civil Revision Petition is allowed setting aside the lower Court dismissal order in I.A.No.163 of 2018 dated 06.04.2018 with a direction to the lower Court, subject to deposit of Rs.5,000/- (Rupees five thousand only) before the lower Court by the plaintiff to meet the expenses for the witness to appear pursuant to the summons to be issued to call for the 'M' books of the years 2011-2012 from the office of the Executive Director, VIDC, ChinChin Bhavan, Nagpur, so to summon.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

02.08.2018
MVA

Dr. B. SIVA SANKARA RAO, J