

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.312 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 20.01.2014, passed in I.A.No.1504 of 2013 in O.S.No.202 of 2012, by the Principal District Judge, Warangal.

This order was passed when a document, dated 17.03.2012, was objected to at the time of the marking of the same in evidence. The contention of the objecting counsel was that it is a bond and an agreement. The contention of the opposite counsel is that it is mere an acknowledgment and that it is stamped correctly. The lower court after hearing both the learned counsels came to a conclusion that it cannot be treated as a bond and it is consequently correctly stamped on Rs.50/- stamp paper, and therefore held that the objection raised is untenable and rejected the same. Questioning the same, the present civil revision petition is filed.

This court has heard both the learned counsel, appearing for the petitioner and for the respondent.

The learned counsel for the revision petitioner argues relying upon the definition of "bond" in Section 2(5) of the Stamp Act that the impugned document is an instrument attested by witnesses and it contains an obligation to pay money to another. Therefore, it is to be stamped as a bond and not as an acknowledgment. The learned counsel relies upon the judgment in *Nareddi Mohan Reddy v. Siripuram Mallaiah*¹ in support of his contention.

¹ 2012 (6) ALD 745

In reply thereto, the learned counsel for the respondent argues that the revision petition itself is not maintainable and he relies upon two judgments of the Hon'ble Supreme Court of India in *Waryam Singh v. Amarnath*² and *Radhey Shyam v. Chhabi Nath*³ to contend that the power of superintendence vested in the High Court under Article 227 of the Constitution of India cannot be extended to a case like this. In the alternative, the learned counsel argues that the impugned order does not suffer from any infirmities and is correct.

The document in question is executed on a stamp paper of a value of Rs.50/-. There are five witnesses to the same. It is dated 17.03.2012. The document is written in Telugu and it clearly says that earlier on 03.10.2010 Rs.14,00,000/- was borrowed. Therefore, for the same, a cheque bearing No.444450, dated 30.09.2012, will be given, as mentioned in the document. The English version is not very clearly given in the appendix of papers. But the fact remains that a cheque bearing No.444450, dated 30.09.2012 was issued. A reading of the plaint reveals that when the cheque was presented for encashment on 06.10.2012, it was returned dishonoured due to insufficient funds. The plaintiff states that he is pursuing an independent action for the dishonour of the cheque and he filed a suit for recovery of the money.

A reading of this document therefore would reveal that there is an admission of the liability in the sense that it is admitted that Rs.14,00,000/- was borrowed. In addition, the cheque, dated 30.09.2012, was issued which was admittedly bounced. Therefore, the plain and simple interpretation of this document shows that the party admitted that there is a liability and there is also an undertaking to repay the debt. The

² AIR 1954 SC 215

³ (2015) 5 SCC 423

document is executed on 17.03.2012 and the cheque given in repayment is dated 30.09.2012. Therefore, this court is of the opinion that the document is a bond and not a mere acknowledgment/liability. The decision cited in *Nareddi Mohan Reddy v. Siripuram Mallaiah* (1 supra) clearly applicable to the facts and circumstances of the case. The lower court committed a serious jurisdictional error in misconstruing the instrument. The order under revision is set aside and the lower court is directed to treat the document as a bond and take appropriate steps for assessing the stamp duty paid and for collecting the same, if necessary.

The two judgments in *Singh v. Amarnath & Radhey Shyam v. Chhabi Nath* (2 & 3 supra) cited by the learned counsel for the respondent are correct, but as held by the Hon'ble Supreme Court of India in the said judgments itself, the power of superintendence conferred under Article 227 of the Constitution of India has to be exercised in appropriate cases. This revision petition cannot be thrown on that ground. The jurisdiction under Article 227 of the Constitution of India is clearly different from the writ jurisdiction under Article 226 of the Constitution of India. Even in the judgment of the learned single Judge in *Nareddi Mohan Reddy v. Siripuram Mallaiah* (1 supra), it is clearly held that when a party agreed to pay money, the instrument falls under the definition of bond, and accordingly, the learned single Judge came to a conclusion that the lower court committed a serious jurisdictional error in totally misconstruing the instrument as an agreement not requiring additional stamp duty. This court concurs with the findings of the learned single Judge.

Accordingly, the civil revision petition is allowed. In the circumstances, no costs.

The court below is directed to look into the aspect of the adequacy of stamp duty treating the document, dated 17.03.2012, as a bond and not as an acknowledgment.

The lower court should proceed with the suit on a priority, since the suit is of the year 2012, and dispose of the same, in accordance with law, without in any way being influenced by what is mentioned in this order.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 12.12.2018
Dsr

D.V.S.S.SOMAYAJULU,J

