

HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.6203 of 2012

ORDER:

Both the counsels are present and advanced arguments in the main revision itself. Originally, Sri Narra Sivanarayana filed the revision. After his death, as per order dated 16.04.2008 in I.A.No.1 of 2015, his legal representatives were brought on record as petitioner Nos.2 to 5.

2. This Civil Revision Petition is filed by the petitioner – defendant aggrieved by the order dated 29.10.2012 passed in I.A.No.588 of 2011 in O.S.No.7 of 2009 on the file of the Senior Civil Judge, Addanki.

3. Brief averments of the case are that the respondent – plaintiff filed the suit in O.S.No.7 of 2009 for recovery of money based on acknowledgment-cum-receipt under Ex.A.1. The alleged attesetor of Ex.A.1 was examined as PW.2. PW.2, in his cross-examination, stated that he did not sign Ex.A.1. The main contention of the respondent – plaintiff is that due to inadvertence, he could not confront with the signature contained on Ex.A.1.

4. Petitioner – defendant filed his counter before the Trial Court stating that PW.2, in his evidence, stated that he did not sign Ex.A.1, that the transaction took place in his presence, that at the time of execution of document, he was not present, that the chief affidavit of PW.2 was filed on 28.06.2011 and, on the same day, PW.2 was cross-examined. It is further stated that, PW.2 was not present at the time of writing of

Ex.A.1, that he has not seen Srinivasa Rao and defendant signing on it, no document was obtained in his presence, that he has not signed on any receipt, that there was no re-examination of the witness made by the plaintiff and, as such, it is not proper on the part of plaintiff to seek recall of PW.2 to give evidence contrary to the evidence already given and recalling of PW.2 is only to fill up the lacunae in the evidence of PW.2.

5. The Trial Court allowed the petition recording the finding “it is a fact that the defendant is the scribe of the document and PWs.2 and 3 are the attesting witnesses to Ex.A.1 document. So, both PWs.2 and 3 are the attesting witnesses to Ex.A.1. On the same day, PW.2 not reexamined by the plaintiff to confirm his signature on the said document. The matter is a listed matter and the petition filed at a fag end of the trial after completion in the month of July, 2011 and the same was pending from that day onwards. If the petition is allowed, certainly the petitioner will go to appellate Court to seek the same relief, later it will be allowed. In such circumstances, this Court allows the petition”

6. Now the point that arises for consideration is :- “whether the order of the Trial Court dated 29.10.2012 in I.A.No.588 of 2011 in O.S.No.7 of 2009 passed by the Senior Civil Judge, Addanki, suffers from any legal infirmities warranting interference.”

Learned counsel for the petitioner contended that the respondent – plaintiff filed a petition at the fag end of the trial and re-examination is not meant to clarify any ambiguity in the chief examination or cross-examination. It is further contended that, in view of the evidence of PW.2 during cross-examination that he was not present at the time of signing of Ex.A.1 and recalling of PW.2 to confront with the signature on Ex.A.1 does not arise.

Per contra, respondent – plaintiff contended that PW.2 is the signatory to Ex.A.1 and when PW.2, in his cross-examination, stated that he has not signed on any receipt, the law requires to confront his signature on Ex.A.1 – acknowledgment-cum-receipt and, inadvertently at the time of examination of PW.2, failed to re-examine and confront the signature of PW.2.

The undisputed facts are that respondent is the plaintiff in the suit in O.S.No.7 of 2009 which was filed to recover money based on acknowledgment-cum-receipt under Ex.A.1. It is also fact that Ex.A.1 contains the alleged signatures of PWs.2 and 3 as attestors. It is also admitted in the evidence in chief of PW.2 that at the instance of plaintiff and his father, the defendant acknowledging his previous receipt of Rs.3.00 lakhs which was taken from the plaintiff and also for the subsequent amount taken on 20.02.2007; later, the defendant himself scribed the acknowledgment-cum-receipt

dated 20.02.2007 in his own hand; and both the transactions took place in his presence and in the presence of Srinivasa Rao.

7. The above facts would go to show that, when both the evidence in chief and cross-examination are read together, though PW.2 clearly stated that he did not sign on any receipt under Ex.A.1 bearing the signature of PW.2, needless to state that the respondent – plaintiff should have re-examined and confronted the signature on Ex.A.1 but the same was not done. By recalling PW.2 only for the purpose of confronting his signature on Ex.A.1, no prejudice or loss would be caused to the petitioner – defendant and, only to that extent, PW.2 may be recalled.

8. The Civil Revision Petition is, accordingly, dismissed while confirming the order dated 29.10.2012 passed in I.A.No.588 of 2011 in O.S.No.7 of 2009 passed by the Senior Civil Judge, Addanki, only to the extent of confronting the signature of PW.2 on Ex.A.1. Needless to say that the petitioner – defendant has right to re-examine PW.2 to the extent of confrontation of signature of PW.2 on Ex.A.1

9. Miscellaneous petitions, if any, pending, shall stand closed.

N.BALAYOGI,J

Dt:26.12.2018
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