

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

C.R.P.Nos. 3379 and 3382 OF 2014

COMMON ORDER:-

C.R.P.No.3379 of 2014 is filed against the order, dated 06-08-2014, passed in I.A.No.582 of 2013 in O.S.No.176 of 2007 on the file of the court of VII Additional District & Sessions Judge, Vijayawada, by which an application to reopen the evidence on behalf of the petitioner/plaintiff was allowed.

2. C.R.P.No.3382 of 2014 is filed against the order, dated 06-08-2014, passed in I.A.No.581 of 2013 in O.S.No.176 of 2007 on the file of the court of VII Additional District & Sessions Judge, Vijayawada, by which an application to receive the additional document (C.D.) for audition in the court was allowed.

3. Both these applications were filed in the lower court and it is the contention of the revision petitioner that when the matter was posted for arguments, without submitting the arguments, the present applications were filed. He, therefore, questions the manner in which the order was passed and points out that under Section 1(4) of the Information Technology Act, 2000 (for short "the Act"), electronic evidence of an agreement of sale is barred. He relies upon the first Schedule of the said Act, which clearly denotes that nothing in the said Act will apply to any

documents or transactions for the sale or conveyance of immovable property or any interest in such property. Hence, it is the contention of the learned counsel for the revision petitioner in both the revision petitions that the C.D that is filed, as a document, cannot be received in evidence at all and that the lower court committed a grave error in allowing the said applications.

4. In reply thereto, the learned counsel for the respondents argued firstly; (a) that the applications were allowed on payment of costs of Rs.200/- each; the learned counsel filed a memo stating that costs of Rs.200/- each were paid/received on 08-08-2014 itself; and that even after accepting costs, the present revision petitions were filed on 23-09-2014. Therefore, his contention is that the revision petitions are not maintainable; and (b) in addition, on the merits of the matter, the learned counsel for the respondent submits that agreements of sale on the basis of which the suit was filed are already on record of the court. It is his submission that if a document of sale or conveyance of immovable property or any interest in such property is recorded in an electronic form then the prohibition under the Act would apply. He drew the attention of this court to Clauses 1 to 4 of the First Schedule which prohibits the negotiable instrument (other than a cheque), a power of attorney, a trust and a Will etc.,

if they are in electronic form from being received in evidence. It is his contention that the agreements of sale are already available on the record and this C.D is only with regard to conversation between the petitioner and the respondent and it does not by itself embody the entire transaction. He, therefore, states that the bar under the I.T.Act is not applicable.

5. This Court after hearing both the learned counsel is of the opinion that (a) having received the costs in the lower court without any protest, as can be seen from the material filed, the present revision petitions could not have been filed by the petitioner; (b) in addition, the court notices that copy of plaint, which is annexed to the material papers, clearly discloses that agreements of sale are filed as documents. A reading of the plaint also makes it clear that the agreements of sale and the terms regarding the agreements of sale are reproduced in the plaint itself. The averments in the plaint are that there is an agreement on 25-03-2006 and a subsequent agreement on 23-02-2007. Therefore, this court after hearing the learned counsel is of the opinion that the plaint is based on a cause of action which in turn based on these written agreements of sale. Therefore, the prohibition under Section 1(4) of the Act will not apply since the C.D is not the sole repository of the entire agreement between the parties as noticed by the

court below. The petitioner filed the C.D only with regard to conversation between the petitioner and the respondent and not as a proof of agreement of sale. In that view of the matter, this court is of the opinion that there are no merits in both the revision petitions. The objections, if any, about the contents of the C.D can be raised at the time when the documents are being received in evidence and that will be subject to the final hearing in the suit and the lower court can decide the same according to law.

Accordingly, both the Civil Revision Petition are dismissed. No costs. Miscellaneous Petitions pending, if any, in both the revision petitions, shall stand closed in consequence.

26-09-2018
TSNR

D.V.S.S.SOMAYAJULU,J

