

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4293 of 2018

ORDER:

1) Assailing the order dated 10.07.2018 in I.A.No.1115 of 2018 in O.S.No.174 of 2017 passed by the Senior Civil Judge, Ramachandrapuram, wherein and whereunder the petition filed under Order 16 Rule 2 and Section 151 of the Code of Civil Procedure to issue summons to the scribe of Ex.A-1-promissory note, was dismissed, the present Revision came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The respondent/plaintiff filed suit in O.S.No.174 of 2017 for recovery of the promissory notes amount along with interest. After completion of the evidence of plaintiff, and after examination of D.W.1, the present I.A. came to be filed, to summon the scribe of the promissory notes. It is said that the alleged promissory notes filed along with the plaint are fabricated and if the scribe of the said promissory notes is examined, the truth will come out. The plaintiff filed a counter, *inter alia* contending that during the cross-examination of D.W.1, the petitioner/defendant has categorically deposed that the scribe of the pronote was

working under the defendant as a Clerk and as such there may not be any use to examine him. It is submitted that when the witness is available with him, it is open to him to examine the said person on his side as a witness and there is no need to summon the said person. Considering the submissions made, the trial court rejected the request. Challenging the same, the present C.R.P is filed.

3) In spite of service of notice, there is no representation on behalf of the respondent/plaintiff.

4) Sri Mangena Sree Rama Rao, learned counsel for the petitioner would submit that the plaintiff filed the suit for recovery of Rs.3,43,283/- along with interest basing on two promissory notes dated 27.11.2014 and 22.01.2015. The case of the plaintiff is that the defendant borrowed an amount of Rs.1,64,000/- and Rs.60,000/- respectively agreeing to repay the same with interest by executing the promissory notes in his favour. It is said that Exs.A-1 and A-2 promissory notes were scribed by the clerk of the defendant by name Moturi Narayana Swamy and put the amounts, date while the remaining blanks were filled by the scribe. After issuing legal notice, the petitioner/defendant got issued a reply on 10.04.2017, requesting the plaintiff to supply copies of the suit demand promissory notes. Since the suit promissory notes were said to be forged and fabricated, the

present I.A. came to be filed. The answer elicited from the cross-examination of P.W.1 would show that at the time of execution of Exs.A-1 and A-2 promissory notes, the brother-in-law of P.W.1 who is none other than the brother of the defendant and also the clerk of the defendant, who worked under him, and who scribed the promissory notes, were present. It would be useful to extract the relevant portion in the evidence of P.W.1, which is as under:-

"As and when I lent amount to the Defendant I got promissory note from the defendant. At the time of the Exs.A-1 and A-2 promissory notes my brother-in-law i.e., the brother of the defendant and the clerk of the defendant who worked under the defendant in quarry who scribed the Exs.A-1 and A-2 promissory notes, Mallipudi Ramakrishna Chowdary are present. The amount, date was mentioned by the defendant on the promissory notes, but the remaining blanks are filled by the scribe."

5) In view of the admission of P.W.1, wherein it is clearly mentioned that Moturi Narayana Swamy scribed Exs.A-1 and A-2 promissory notes, it would be just and proper to examine him. In fact no prejudice would be caused to the plaintiff, in examining the person, who is said to have scribed the pronotes. It is also to be noted here that P.W.2 in his evidence in chief, deposed that one M.Narayana Swamy scribed the suit promissory notes. Therefore, the fact that one Narayana Swamy scribed the suit promissory notes gets fortified through the evidence in chief of P.W.2 as well. In view of the facts and circumstances, the request of the

petitioner for examination of the scribe of the suit promissory notes can be considered.

6) Accordingly, the C.R.P., is allowed by setting aside the order dated 10.07.2018 in I.A.No.1115 of 2018 in O.S.No.174 of 2017 passed by the Senior Civil Judge, Ramachandrapuram. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:05.10.2018
GM

