

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.4317 OF 2018

ORDER:

- 1) Heard learned counsel for the petitioner. No representation on behalf of the respondent. Perused the record.
- 2) Assailing the order dated 12.04.2018, passed in I.A.No.463 of 2018 in O.S.No.162 of 2016 on the file of the Senior Civil Judge, Pithapuram, wherein an application filed under Order XVI Rule 7 and Section 151 of C.P.C. to summon the Branch Manager, State Bank of India, Pithapuram, was rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.
- 3) A perusal of the averments in the affidavit filed in support of the petition would show that the petitioner/ plaintiff having 1/ 10th share in the property covered by Door No.10-1-41, 42, 43, 45 and 57 in Sy.No.250/ 1 of Pithapuram Municipal Area. Previously, the defendant, who is the cousin of the plaintiff, used to look after the house property and manage on behalf of all the co-owners. The defendant on behalf of all the co-owners of the property entered into the agreement of sale in respect of the said property with Sripada Srivallabha Seva Sangh on 02.11.2014 and received a sum of Rs.10.00 lakhs as advance amount by way of banker's cheque bearing No.513135, which was encashed by the defendant. It is stated that after the agreement, the defendant

demolished the existing building covered by the above door number and sold valuable teakwood and other building material, thereby realised a sum of Rs.25 lakhs. But the defendant did not pay 1/ 10th share to the petitioner. Hence, the petitioner filed a suit for recovery of his share amount out of Rs.10.00 lakhs and Rs.25.00 lakhs.

4) The defendant denied receipt of amount of Rs.10.00 lakhs. The claim of the plaintiff is that an amount of Rs.10.00 lakhs was debited from the account of Sripada Sri Vallabha Seva Sangh on 11.03.2015 and it was transferred to the defendant's account vide account bearing No.0032104632436. Hence, pleads to summon the Branch Manager, State Bank of India, Pithapuram Branch, to produce the bank account statement from 10.03.2015 to 20.03.2015 relating to Pyndah Veera Venkata Satyanarayana (defendant) savings bank account No. 0032104632436 with State Bank of India, Pithapuram and the current account relating to Sripada Srivallabha Seva Sangh, account No.11003309399 with State Bank of India, Pithapuram and to give evidence.

5) A counter came to be filed opposing the same. It is said that since the petitioner has not produced copies of the account statement of defendant and Sripada Srivallabha Seva Sangh, he could not have asked for summoning of those accounts without looking into the same. He pleads that the application filed by the petitioner *prima facie* is misconceived.

6) Taking into consideration the rival submissions made, the trial Court rejected the request of the petitioner on the ground that the plaintiff has not made any endeavour to secure those bank statements, it may not be proper for the Court to summon the said Branch Manager as a court witness. Relying upon the judgments of this Court in *Shaik Abdul Rasool V. G.Lakshmi Reddy and another*¹ and *Mohd, Khadeer and others v. K.Venkatesham and others*² the trial Court held that it is not proper on the part of the Court to summon the witness to examine as Court witness. Challenging the same the present Civil Revision Petition came to be filed.

7) Sri S.Subba Reddy, learned counsel for the petitioner would contend that the judgment relied upon by the trial Court ie. *Shaik Abdul Rasool* case (1 supra) would not apply to the case on hand. According to him, the said judgment deal with a petition filed under Order XVI Rule 14 (1) and 1A of C.P.C., with regard to summoning of the witness as a Court witness. According to him in the instant case the petition was filed under Order XVI Rule 7 of C.P.C. Hence, the case on hand is different from the facts in *Shaik Abdul Rasool* case. He further submits that since obtaining a document from the bank more particularly in respect of accounts belonging to others was practically impossible and the only method which the petitioner can prove the same by summoning the Branch Manager as his own witness.

¹ (2011) 3 ALD 138

² (2014) 1 ALD 708

8) On the other hand, learned counsel for the respondent opposed the same, reiterating the contents of the counter filed and also the findings given by the trial Court.

9) The issue that arises for consideration is whether the request of the petitioner for summoning the Branch Manager along with the two accounts for the period from 10.03.2015 to 20.03.2015, is just and reasonable?

10) The grievance of the petitioner/ plaintiff appears to be that first the defendant, to whom the property was entrusted on behalf of the co-owners, entered into an agreement of sale with Sripada Srivallabha Seva Sangh on 02.11.2014. Initially he received an amount of Rs.10,00,000/- which came to be deposited in his account and after demolishing the building, he received a further sum of Rs.25.00 lakhs through sale of teakwood, which was again deposited in his account. It is claimed by the petitioner that he is entitled 1/ 10th share out of the amounts received by the defendant. Hence, a suit came to be filed. According to the petitioner, the amount was received by the defendant on 11.03.2015 and therefore pleads that summoning of Branch Manager, State Bank of India, Pithapuram Main Branch, along with the records of savings bank account No.0032104632436 and current account No.11003309399 is just and reasonable. The reason given by the trial Court in para No.7 of the impugned order is that the petitioner in his affidavit did not mention about the

endeavours made by the petitioner to secure the bank statements relating to the petitioners and thereto.

11) It is to be noted that the Branch Manager is to be summoned for the reason that the said amount came to be transferred or debited from the account of Sripada Srivallabha Seva Sangh to the account of the defendant. Therefore, non-filing of the statement of the account of the petitioner, in my view is irrelevant for consideration, but said fact weighed with the trial Court in dismissing the petition. Even assuming for the sake of argument that the petitioner never made any effort to secure the bank accounts of defendant and Sripada Srivallabha Seva Sangh, it is to be noted that no banker will furnish the account statement to a third person without any order from the Court. Viewed from any angle, the finding of the trial Court with regard to non-mentioning about the endeavour made by the petitioner, may not be correct.

12) Coming to the judgment of this Court in Shaik Abdul Rasool (1 supra), it was a case where this Court dealt with an application under Order XVI Rule 14 of C.P.C. The issue in the said case was as to whether a person can be summoned as a Court witness. But here, the situation is different. It is not the case of the petitioner that he intends to summon the Branch Manager as a Court witness. The petitioner intends to summon the Branch Manager to be examined on his behalf.

13) For the aforesaid reasons and since the documents which are sought to be summoned cannot be made available to the

petitioner and will be summoned only through the Branch Manager, the order under challenge is set aside and the trial Court shall take steps in accordance with law.

14) Accordingly, the Civil Revision Petition is disposed of. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

24.08.2018
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