

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.7058 OF 2017

ORDER :

This revision is filed against the order dated 12.10.2017 passed in IA.No.756 of 2014 in OS.No.203 of 2013 by the Senior Civil Judge, Narsapuram, wherein the application filed by the petitioner under Section 45 of the Indian Evidence Act, for sending the signatures on the suit promissory note along with the sheet of paper on which the signature of the petitioner/defendant is taken in the open court, to the Expert for his opinion, is dismissed.

The case of the petitioner/defendant is that the respondent/plaintiff filed suit against him for recovery of suit amount basing on the alleged promissory note dated 10.08.2012; that the petitioner/defendant also filed written statement taking a specific plea that the suit promissory note is a forged one; and that in order to elicit that his signatures on the suit pronote are forged one, he filed a petition under Section 45 of the Evidence Act to send the forged suit promissory note to the expert for comparison along with the sheet of paper on which the signature of the petitioner is taken by the Court in the open Court. Subsequently the petitioner/defendant filed IA.732/2017 to issue summons to Canara Bank, Narsapur Brnach to produce payment, withdrawal slips and loan renewal application for the period from 15.03.2012 to 17.03.2012, as the signature of the petitioner on the said documents are contemporary signatures as

that of the suit pronote, they can be send to hand writing expert along with promissory note for comparison. In pursuance of the order dated 19.09.2017 the said documents were produced by the bank officials. But the Court below without considering the documents summoned as contemporaneous documents, dismissed IA.No.756/2014 holding that as the petitioner filed the said IA only to send the suit pronote for comparison with the signatures taken on a separate sheet of paper; and that as the petitioner failed to request to send the documents summoned from the Bank to be sent with the suit pronote for comparison.

Aggrieved by the said order present CRP is filed.

Learned counsel for the petitioner submits that though the admitted contemporaneous signatures are very much available with the Court, the Court below dismissed the application on the erroneous grounds that petitioner's signatures were obtained in the open court cannot be treated as contemporaneous signatures as that of the signatures found in the suit pro note.

This Court issued notice to respondent/plaintiff on condition of the petitioner/defendant paying Rs.5,000/- to the respondent towards costs.

Learned Counsel for the petitioner/defendant submits that the said amount has been paid to the respondent by way of Demand Draft.

Inspite of service of notice and payment of costs by the petitioner, there is no appearance for the respondent/plaintiff.

It is to be seen that petitioner should have amended IA.No.756/2014, since subsequently IA.No.732/2017 is allowed. Even according to the observation in the impugned order, since subsequently IA.No.732/2017 is allowed, the Court below instead of dismissing the IA.756/2014, could have allowed the application with a direction to send the signatures in the suit pro note for comparison with the signatures on the documents summoned in IA.No.732/2017.

In view of the aforesaid facts and circumstances the order dated 12.10.2017 passed by the Court below in IA.No.756/2014 is set aside and the Court below is directed to send the signatures on the suit pronote for comparison with that of the signatures on the documents summoned in IA.No.732/2017.

Accordingly the Civil Revision Petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the CRP, shall stand closed.

A.RAJASHEKER REDDY, J

20.02.2018
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