

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6868 of 2017

ORDER:

This Civil Revision Petition is filed, under Article 227 of Constitution of India, challenging the order dated 05.10.2017 passed in I.A. No.257 of 2017 in O.S. No.203 of 2015 by the Principal Junior Civil Judge, Kothagudem.

The brief facts of the case are that the petitioner, who is defendant in the suit, has filed an application in I.A. No.257 of 2017 under Section 45 of Indian Evidence Act to refer Ex.A1-promissory note to the expert for comparison with his admitted signatures on the documents filed along with memo i.e., miscellaneous receipt issued by the Municipal Commissioner, Kothagudem Municipality dated 15.10.2013, notice issued by SHO, PS.III (T), Kothagudem dated 28.10.2013 and Voucher of H.D.F.C Bank dated 24.11.2014, and for opinion. He further contended that the plaintiff and his son are doing unauthorised private chit business and he joined as a subscriber in the private chit maintained by the plaintiff and relating to that chit transaction, the plaintiff obtained his signature on the blank promissory note,

The respondent/ plaintiff opposed the petition on the ground that signature on Ex.A1 is admitted by the petitioner/ defendant and no further proof of signature on Ex.A1 is required and prayed for dismissal of the revision.

Upon hearing of arguments of both the counsel, the trial Court has dismissed the petition on two grounds. The first ground is that no contemporaneous signatures are available for reference of disputed

signatures for comparison with the admitted signatures for the expert opinion and the second ground is that the defendant admitted the signature on Ex.A1 while denying the execution of promissory note contending that plaintiff and his son obtained his signature on blank promissory note and misusing the same, filed the suit with false allegations.

Aggrieved by the order, the present revision is filed on various grounds. Mainly on the ground that due to non-availability of contemporaneous documents with admitted signatures of defendant is not sufficient and therefore, dismissal of the petition by the trial Court on that ground is illegal.

It is also contended that the defendant denied the execution of promissory note while contending that the suit promissory note is a created one in collusion with the assistance of the attestors and scribe, and the order passed by the trial Court is erroneous and prayed to set-aside.

Learned counsel for the petitioner reiterated the contentions in the grounds of revision, while drawing the attention of this Court to the memo dated 11.09.2017, which was filed before the trial Court to support his contention that the documents containing the signatures of this petitioner/ defendant are available before the trial Court. Whereas Sri S.Madan Mohan Rao, learned counsel for the respondent contended that the affidavit of Kamble Mahesh, the petitioner/ defendant in lieu of examination-in-chief is suffice to conclude that the document—Ex.A1 is signed by the petitioner/ defendant. On the strength of this admission, he requested to dismiss the petition.

Considering the rival contentions, the point arise for consideration is “whether the defendant/ petitioner herein admitted the signatures on Ex.A1, if so, whether there is any necessity to refer the disputed signatures along with contemporaneous document containing admitted signatures of the defendant for expert opinion?”

POINT:

The petitioner has filed a petition under Section 45 of Indian Evidence Act which deals with relevancy of expert opinion and the petitioner ought to have filed an application under Order 26 Rule 10-A C.P.C. However, the wrong quoted provision of law is not a ground, to reject the petition, if the petitioner is otherwise entitled to claim such relief.

The trial Court has dismissed the petition on two grounds. During the course of hearing, counsel for the respondent, drawn the attention of this Court to para No.4 of the affidavit filed under Order XVIII Rule 4 C.P.C in lieu of examination in chief to contend that the petitioner admitted his signature and the same is extracted hereunder:

“I submit that as stated above the plaintiff obtained my signature on a printed blank promissory note in the course of chit transaction without paying any amount, as such the suit promissory note is devoid of consideration and hence it has no legal sanctity in the eye of law. I submit that the plaintiff and his son are professional money lenders without a valid license and they are also doing illegal chit fund business.”

This specific admission is suffice to conclude the signature bearing on Ex.A1 is of petitioner/ defendant and no further proof is required as it is a judicial admission, which is sufficient to conclude with this extract.

Whereas the petitioner himself admitted the signature on Ex.A1, while raising other contentions, no further proof is necessary to establish the signature on A1. Therefore, reference of disputed signature on Ex.A1 along with admitted signatures has more or less become unnecessary in view of the admission.

Therefore, dismissal of the petition by the trial Court on those grounds is proper and valid and availability of contemporaneous admitted signatures on any document is not relevant for deciding the present petition.

Hence, I find no ground to interfere with the order passed by the Court below as I find no illegality, infirmity while exercising the jurisdiction under Article 226 of Constitution of India.

In the result, the Civil Revision Petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions, pending if any, in this writ petition shall stand dismissed.

M.SATYANARAYANA MURTHY, J.

Date: 17.04.2018
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Dt.17.04.2018

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