

THE HON'BLE SRI JUSTICE SANJAY KUMAR
CIVIL REVISION PETITION NO.7235 OF 2017

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 27.11.2017 passed by the learned Additional Junior Civil Judge, Kukatpally at Miyapur, Ranga Reddy District, in I.A.No.870 of 2017 in O.S.No.162 of 2015. The said I.A. was filed by the second defendant in the suit under Section 151 CPC to send the Memorandum of Understanding (MoU) dated 04.10.2012 (Ex.A1) to the Forensic Science Laboratory for comparison of the age of the ink, signatures and date of document to know in which year and month the same was executed and also to know whether it was executed in the year 2012 or in the year 2015. By the order under revision, the trial Court disallowed the plea and dismissed the I.A. Aggrieved thereby, the second defendant is before this Court.

Heard Sri Janardhana Reddy Ponaka, learned counsel for the petitioner-second defendant, Sri T.V.S.Kumar, learned counsel representing Smt. Gummadi Girija, learned counsel for the first respondent-plaintiff company, and Sri Suraj Narain Prasad, learned counsel for the second respondent-first defendant.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.162 of 2015 was filed seeking eviction of the defendants from the suit schedule property and redelivery thereof to the plaintiff company. The suit schedule property comprises the residential Flat No.106, First Floor, Sapphire Block, Udaya Polygon, Chandanagar, Ranga Reddy District.

Be it noted that the defendants in the suit are husband and wife.

The case of the plaintiff company was that the first defendant, being its employee, showed interest in purchasing the suit flat and paid Rs.5,00,000/- towards part sale consideration promising to pay the balance Rs.25,00,000/- within twelve months, with the condition that in case he failed to do so, the sale deed would stand cancelled and title would be re-conveyed to the plaintiff company. The first defendant executed MoU dated 04.10.2012 (Ex.A1) incorporating these conditions. The plaintiff company thereafter registered sale deed dated 18.10.2012 bearing Document No.7004 of 2012. The first defendant however failed to pay the amount as promised, but he and his wife, the second defendant, remained in possession of the suit flat on payment of monthly rent of Rs.9,000/-. The first defendant re-conveyed the title over the suit flat in favour of the plaintiff company *vide* registered cancellation deed dated 10.10.2013 bearing Document No.5584 of 2013. Even thereafter, he and the second defendant continued to occupy the suit flat. In November 2013, the first defendant informed the plaintiff company that the suit flat was in the sole occupation of the second defendant, with whom he had serious differences, and that he was no longer residing in the said flat. As he expressed his inability to deliver vacant possession of the suit flat, the petitioner company got issued legal notice dated 05.03.2014 to the defendants but to no avail. The plaintiff company accordingly sought eviction of the defendants from the suit flat.

While so, the subject I.A. was filed by the second defendant claiming that during the cross-examination of P.W.1, he clearly admitted that he was ready to get Ex.A1 MoU examined by Forensic Science Laboratory authorities for comparing the age of the ink, signatures and date of document to know in which year, month and date it was executed,

so that it could be ascertained whether it was executed in the year 2012 or 2015. She therefore asserted that it was just and necessary to send the said document to the Forensic Science Laboratory at Hyderabad so that the facts would come out.

Except for the so-called concession made by P.W.1 in this regard, the second defendant did not come up with any other reason as to why the subject document needed to be examined and how it would help her case. The first defendant opposed her plea stating that as he had already executed the registered cancellation deed dated 10.10.2013 (Ex.A2), the MoU dated 04.10.2012 (Ex.A1) no longer had any relevance. The plaintiff company also opposed the plea of the second defendant, pointing out that the subject I.A. was filed only after closure of the defendants' evidence and when the case was coming up for final arguments. The plaintiff company also pointed out that the second defendant did not state as to why sending the document for forensic examination was important for the case and how it would affect the outcome thereof.

Upon considering the rival pleadings, the trial Court found merit in the contention of the opposing parties that no explanation was given by the second defendant as to what would be the hardship caused to her by Ex.A1 not being examined forensically. Further, as the cancellation deed dated 10.10.2013 (Ex.A2) superseded the MoU dated 04.10.2012 (Ex.A1), the trial Court opined that Ex.A1 had lost its sanctity and no purpose would be served in sending it for forensic examination. The trial Court therefore held that the petition was devoid of merit and dismissed it.

It is significant to note that the so-called concession made by P.W.1, which is the basis for the subject I.A., was as long back as on 30.06.2017. Despite the same, the second defendant came up with the

subject I.A. only towards the end of November, 2017, after closure of the defendants' evidence and when the case was ripe for arguments. Therein, she did not even state as to how forensic examination of Ex.A1 would further her case.

Sri Janardhana Reddy Ponaka, learned counsel, would fairly concede that there is no possibility of determining the age of ink even if forensic examination of a document is undertaken. He does not dispute the fact that the stamp paper on which Ex.A1 MoU was drafted was sold in October, 2012, but would contend that it would be possible to ascertain as to whether the document was executed in 2012 or 2015. If the age of the ink cannot be determined, this Court is at a loss to understand as to how it would be possible to know whether the document drafted on this stamp paper was drawn up in 2012 or 2015. In any event, when the second defendant did not even cite any reason as to how she would be benefited by forensic examination of the subject document, this Court has to assume that she is only seeking to initiate a roving enquiry in the context thereof. Though the argument now advanced by Sri Janardhana Reddy Ponaka, learned counsel, is that the MoU was fabricated only after differences arose between the first and second defendants and it formed the basis for the cancellation deed (Ex.A2), this Court finds no foundational pleadings in the I.A. filed before the trial Court for such allegations. The further contention of the learned counsel that the plaintiff company and the first defendant are now colluding to defeat the interests of the second defendant is also not borne out by the pleadings.

On the above analysis, when it is not clear as to what is the purpose sought to be achieved by forensic examination of Ex.A1 MoU and whether such forensic examination is even possible, no purpose would be

served in delaying the suit proceedings at the stage of arguments for undertaking this exercise. The order passed by the trial Court holding to this effect therefore does not warrant interference, be it on facts or in law.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

12th APRIL, 2018
PGS

