

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.992 of 2019

O R D E R:

This Revision is filed challenging the order dt.26.03.2019 in I.A.No.2102 of 2018 in O.S.No.576 of 2013 of the Principal District Judge, Ranga Reddy District at L.B.Nagar.

2. Petitioner is the defendant in the above suit.
3. Respondent/plaintiff filed the said suit against the petitioner for a direction to the petitioner to appear before the Sub-Registrar, Vanasthalipuram for presentation and registration of Sale Deed dt.27.02.2013 executed in favour of the respondent in respect of suit schedule property pursuant to an Agreement of Sale dt.26.02.2013 and for other reliefs.
4. Written statement was filed by the petitioner denying execution of Agreement of Sale as well as the Sale Deed.
5. It is contended that petitioner did not receive any amount from the respondent in the alleged transaction; that the husband of the respondent is a police constable and there was a loan transaction between the husband of the petitioner and one A.Giri, in which the husband of the petitioner had to pay Rs.50,000/- out of Rs.1,00,000/- which was obtained as a hand loan; that as a security for the said loan, husband of the petitioner had issued a blank cheque and that the

husband of the respondent took the same from the husband of the petitioner, filled up an amount of Rs.4,00,000/- and filed a case under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') against him.

6. It is contended that under the threat of arrest of the petitioner's husband, respondent's husband forcibly took his signatures on blank papers and other formats without disclosing its contents stating that they are necessary as security for obtaining bail for the petitioner's husband.

7. During the course of evidence of the petitioner, petitioner examined her husband as D.W.2.

8. D.W.2 was confronted by respondent with two documents i.e., Memorandum of Understanding dt.17.07.2008 and another Memorandum of Understanding dt.26.09.2008 between D.W.2 and A.Giri; and he admitted his signatures on the documents on 24.04.2018, but later on 26.07.2018 he denied his signatures on them.

9. Thereafter, respondent filed I.A.No.2102 of 2018 to send the signatures on the Chief Affidavit of D.W.2 and Cross-Examination on 24.04.2018 i.e., Exs.A8 and A9 for comparison to the Hand Writing Expert.

10. In the said application, it is contended that since D.W.2 had denied his signatures on Exs.A8 and A9 which proves

that he has to pay to A.Giri more than Rs.70,00,000/- but not Rs.1,00,000/-, the question of taking of cheques from A.Yadagiri and filing false case and obtaining signatures on Non-Judicial-Stamp Papers through which the Agreement of Sale was prepared by the respondent with the help of her husband, would not arise.

11. Counter affidavit was filed by the petitioner opposing the said application stating that the allegations made by the respondent are not true. She contends that Exs.A8 and A9 transactions are not relevant to the subject matter of the suit and the parties to Exs.A8 and A9 are not parties to the suit. It is also contended that the case under Section 138 of the Act filed by the husband of the respondent against the husband of the petitioner was dismissed and the burden is on the respondent to prove that the Agreement of Sale dt.26.02.2013 was obtained from the petitioner without undue influence, fraud and compulsion.

12. By order dt.26.03.2019, the Court below allowed the said application.

13. The Court below held that in defence to the plea in the suit, the petitioner had taken a defence that Rs.1,00,000/- was borrowed by her husband from one A.Yadagiri; respondent had produced Exs.A8 and A9 to show that petitioner's husband borrowed Rs.70,00,000/- but not

Rs.1,00,000/- as pleaded in the written statement; in case Rs.70,00,000/- is to be paid by D.W.2 to A.Yadagiri, there would arise a question as to why the blank cheque was not used by A.Yadagiri but handed over to the respondent's husband. Such a question having arisen, respondent has a right to prove that the pleadings in the written statement are false and incorrect.

14. Challenging the same, this Revision is filed.

15. Counsel for the petitioner contends that Exs.A8 and A9 are not produced from proper custody and they have no connection with the alleged suit transaction and the Court below could not have allowed I.A.No.2102 of 2018 and send them to an expert. He also contended that the suit transaction relates to Agreement of Sale dt.26.02.2013 and Sale deed dt.27.02.2013, and their execution allegedly by the petitioner without undue influence, coercion etc., is to be proved and therefore, the sending of the disputed signatures of the D.W.2 for comparison with the disputed signatures on Exs.A8 and A9, is unwarranted.

16. When in defence to a claim for relief in a suit, the defendant takes a particular plea, plaintiff should not be denied an opportunity to disprove the said plea.

17. The Court below by passing impugned order has only facilitated the respondent to try to disprove the plea taken by the petitioner and it cannot be said that it committed any error of jurisdiction while doing so. However, while deciding the suit, the Court below shall consider all the objections which the counsel for the petitioner/defendant may raise regarding relevancy of the transactions under Exs.A8 and A9 and the report, if any, received from the Hand Writing Expert of the Forensic Science Laboratory, and shall decided the suit uninfluenced by any observations made by it in the impugned order.

18. The Civil Revision Petition fails and is accordingly dismissed. No order as to costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

26.04.2019

dv