

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

C.R.P. No.4063 of 2014

O R D E R:

This Revision is filed assailing the order dated 20.10.2014 in I.A.No.933 of 2014 in O.S.No.176 of 2012 of the Principal District Judge, Khammam.

2. Petitioner is the defendant in the suit.

3. The respondent had filed the said suit for recovery of money against the petitioner on the basis of a promissory note allegedly executed on 12.12.2009 at Khammam by the petitioner for Rs.10 lakhs.

4. It is alleged in the plaint that the parties were acquainted with each other and out of such acquaintance and necessity, the petitioner approached the respondent and borrowed said amount of Rs.10 lakhs and executed the demand promissory note; that petitioner had even filled the date and amount columns and he had also signed the same; and that inspite of repeated demands, petitioner did not discharge his liability and therefore he filed the suit.

5. Written statement was filed by the petitioner denying that he had borrowed any amount or executed the promissory note. He also took a plea that the suit promissory note is devoid of consideration. His contention was that the father in law of the respondent and he did business of running a

brandy shop and in that connection the father in law of the respondent obtained signed blank cheques and printed proforma promissory note towards security from him; that the petitioner himself had filled the date and money column as 12-12-2009 and Rs.10,00,000/- in the said proforma promissory note; after the conclusion of the business, they were not returned; and the suit promissory note was fabricated by the respondent's father in law in the name of the respondent.

6. Thus, in the said written statement, the petitioner in equivocal terms admitted his signatures and his hand writing to some extent on the suit promissory note.

7. Thereafter, the petitioner filed I.A.No.933 of 2014 seeking amendment of the written statement and seeking to introduce a plea in the written statement that in the suit promissory note dated 12.12.2009 his signature has been forged and blank signed promissory note which had been given by him to the father in law of the respondent was not the suit promissory note. Apart from this, he also sought to substitute the word 'plaintiff' in place of the 'defendant' in 3rd line of paragraph 3 of the written statement.

8. Counter affidavit was filed by the respondents opposing these amendments and it was contended that the proposed amendment cannot be entertained because earlier petitioner

had admitted his signatures and now he tries to take a different plea.

9. By order dated 20.10.2014, the Court below partly allowed the application for amendment and permitted the petitioner to correct 3rd line of paragraph 3 of the written statement by substituting the word plaintiff with the word defendant therein. But, however, did not permit the petitioner to add the other plea in the written statement regarding forgery of his signature on the suit promissory note and also the plea that the blank signed promissory note which he has delivered to the father in law of the respondent is not the suit promissory note. It held that the petitioner is seeking to change his earlier plea admitting his signature and mentioning of amount in the suit promissory note and this cannot be permitted.

10. Assailing the same, this Revision is filed.

11. Counsel for the petitioner sought to contend that defendant in the suit is entitled to take inconsistent pleas and placed reliance on the reported in ***Baldev Singh And Others vs. Manohar Singh And Another***¹.

12. There is no dispute that inconsistent pleas can be raised by the defendant in the written statement but in the instant case, there was no inconsistent plea in the written

¹ (2006) 6 SCC 498

statement originally filed by the petitioner/defendant in the suit. The plea inconsistent with the plea taken in the original written statement (wherein the petitioner had admitted his signature and writing on the suit promissory note) is sought to be taken away by way of an amendment by filing an application under Order VI Rule 17 CPC.

13. When there is a clear admission about his signature and hand writing in the suit promissory note, the petitioner cannot be allowed to introduce, by way of amendment, a contra plea which would allow to withdraw the said admission made in favour of the respondent/plaintiff.

14. In **Modi Spinning & Weaving Mills Co. Ltd vs. Ladha Ram & Co.**² a three Judge bench of the Supreme Court held that though it is permitted to raise an inconsistent plea in the written statement, such inconsistent plea, which would displace the plaintiff from the admissions contained in the written statement, cannot be allowed; and if such amendments are allowed in the written statement, plaintiffs will be irretrievably prejudiced by being denied the opportunity of extracting the admission from defendants. This was followed in **Heeralal vs. Kalyan Mal and others**³

14. In this view of the matter, I am of the opinion that the Court below did not commit any error of jurisdiction in

² AIR 1977 SC 680

³ AIR 1998 SC 618

refusing to permit the petitioner to withdraw admissions made by him in the written statement filed by him originally.

15. I do not find any merit in the Civil Revision Petition and is accordingly dismissed. No costs.

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

M.S.RAMACHANDRA RAO, J

15.02.2019

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