

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

C.R.P. No.3050 of 2018

O R D E R:

This Revision is filed under Article 227 of Constitution of India challenging the order dated 09.04.2018 in I.A.No.554 of 2017 in O.S.No.369 of 2016 of IV Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioners are defendants in the suit. The said suit was filed by the respondents for recovery of money against the petitioners on the basis of a promissory note allegedly executed by the 1st petitioner in favour of the respondent to which the 2nd petitioner was guarantor.

3. Written statement was filed by the petitioners taking the plea that the entire amount due in the promissory note was already received by the respondent; that the conversation between the respondent and the wife of the 2nd petitioner was recorded in a mobile phone; and in that conversation, the respondent admitted that he received entire amount due in the promissory note.

4. Petitioners filed I.A.No.553 of 2017 under Order VIII Rule 1-A (3) CPC to receive the mobile phone/compact disc wherein the conversation was recorded after copying from the mobile phone. This application was allowed by the Court below on 01.03.2018.

5. Petitioners have also filed I.A.No.554 of 2017 to collect the voice sample of the respondent and send it along with the compact disc/mobile phone containing the recorded voice of the respondent to an expert to identify that the voice recorded in the compact disc/mobile phone belongs to the respondent.

6. This application was opposed by the respondent, who contended that if the amount is repaid, the petitioner never insisted for return of the promissory note or produced a receipt and only to prolong the proceedings in the suit, this I.A. was filed.

7. By order dated 09.04.2018, the Court below dismissed I.A.No.554 of 2017 observing that no other evidence is placed by the petitioners and there was no equipment in the Court below to record the voice of the respondent and send it to an expert. It observed that opinion of the expert is only a piece of evidence which requires to be taken into consideration along with other evidence. But in this case, there is no such evidence brought on record.

8. Assailing the same, this Civil Revision Petition is filed.

9. Heard the counsel for the parties.

10. From the facts narrated, it is clear that only defence available to the petitioners is that the money borrowed under the promissory note had already been repaid and there is an

acknowledgment by the respondent to that effect, which was recorded in the conversation in the mobile phone as referred to above. It was also copied on the compact disc.

11. Having permitted petitioner to file both the mobile phone and compact disc in I.A.No.553 of 2017 on 01.03.2018, the Court below ought not have dismissed I.A.No.554 of 2017 to collect voice sample from the respondent and send it to an expert to compare with the voice recorded in the mobile phone/compact disc produced by the petitioners. If the Court had no equipment to record the voice of the respondent, it would have directed the respondent to appear before the FSL, Hyderabad and directed the said office to record voice sample of the respondent in the presence of the petitioners and then referred the same to an expert within the said organization for comparison with the voice sample available on the compact disc/mobile phone. The Court below erred in doing so and grave prejudice is thus caused to the petitioners.

12. Therefore, this Revision is allowed; Order dated 09.04.2018 in I.A.No.554 of 2017 in O.S.No.369/2016 of IV Senior Civil Judge, City Civil Court, Hyderabad is set aside; the said I.A. is allowed and the said Court is directed to instruct the respondent to attend the office of the FSL on the date and time fixed by it and get the voice sample of the respondent recorded by the said Laboratory officers in the presence of the petitioners or their counsel; then have the

said voice sample compared with the voice sample available on the compact disc/mobile phone submitted by the petitioners; and then submit a report to the Court, so that the identity of the voice recorded in the compact disc/mobile phone would be clear and also it would be known whether it was the voice of the respondent which was recorded therein or not. Only after the said exercise is completed, the Court below shall proceed further in the matter and not otherwise. This exercise shall be completed by the Court below within six (06) weeks from the date of receipt of copy of the order. No costs.

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

M.S.RAMACHANDRA RAO, J

25.03.2019

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