THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2278 OF 2019

ORDER:

This revision under Article 227 of the Constitution of India, is filed by the revision petitioner/defendant, aggrieved by the order dated 19.08.2019 passed in I.A.No.377 of 2019 in O.S.No.56 of 2018 by the learned III Senior Civil Judge, City Civil Court, Secunderabad, wherein the petition filed by the petitioner/defendant under Order VIII Rule 1A(3) CPC seeking to receive his bank account statement, was dismissed.

2) Heard the learned counsel for both sides and perused the record.

3) Learned counsel for the revision petitioner/defendant would submit that the subject suit is filed by the respondent/plaintiff for recovery of money. The revision petitioner/defendant has specifically pleaded in the written statement regarding repayment of loan. The bank account statement obtained by the revision petitioner was misplaced and after tracing the same, he filed the subject I.A to receive it in the evidence. The Court below while dismissing the subject I.A erroneously observed that the revision petitioner/defendant did not mention in his written statement about the alleged bank statement though it was obtained on 16.03.2018, which is much prior to date of filing of the bank statement i.e, 29.06.2018. The Court below also observed that without there being any specific mention regarding the details of payments made by the revision petitioner/defendant, the alleged

bank account statement cannot be brought on record. Learned counsel submitted that it is not necessary to mention the details of payments made in the written statement. Whether the amount was paid or not is a matter of evidence, which requires to be proved during the course of trial of the suit. The Court below is unjustified in passing the impugned order and ultimately prayed to set aside the same by allowing the revision petition as prayed for.

4) On the other hand, learned counsel for the respondent/ plaintiff would contend that there is no pleading in the written statement with regard to the details of the loan amount repaid. In the absence of pleading, no evidence is allowed to be laid in the subject suit. The Court below is justified in dismissing the subject I.A and ultimately prayed to sustain the impugned order.

5) In view of the submissions made by both sides, the point that arises for determination is:

> *"Whether the impugned order dated 19.08.2019 passed in I.A.No.377 of 2019 in O.S.No.56 of 2018 by the learned III Senior Civil Judge, City Civil Court, Secunderabad, is liable to be set aside?"*

6) POINT: As seen from the record, there is a mention in the written statement that the revision petitioner/defendant has repaid the loan amount of Rs.3,00,000/- but the respondent/plaintiff did not return the promissory note, receipt and cheque. In the given circumstances, the revision petitioner/defendant has setup a defence that he has repaid the loan amount. Admittedly, he has not given the details of Cheques through which the repayment was

made. Further, those details were incorporated in the affidavit filed in support of I.A.No.377 of 2019 in O.S.No.56 of 2018. Para 3 of the affidavit, reads as follows:

> *"The respondent/plaintiff is a money lender doing money lending business without licence. The plaintiff having bank accounts in so many banks. The loan transaction for Rs.3,00,000/- took place in the month of August, 2014. The plaintiff took blank promissory note and a blank Cheque from me in August, 2014. <u>I have repaid to the plaintiff a sum of Rs.2,00,000/- through bearer Cheque and the plaintiff withdrawn on 19th February, 2015 and Rs.1,25,000/- was withdrawn by the plaintiff on 21.01.2016 by bearer Cheque</u>."*

It is the contention of the revision petitioner/defendant that the cheques issued by him were encashed by the respondent/plaintiff and the same is figuring in the books of accounts of banks. Therefore, the statement of account reflecting those entries is necessary for the adjudication of the subject matter of the suit.

7) In the given circumstances, whether the payments in question were made towards the repayment of loan amount or not, is a matter of determination by the Court below after due trial. Even though there is no specific pleading in the written statement as contended by the respondent/plaintiff, it would not preclude the revision petitioner/defendant from adducing evidence i.e, getting the copy of his bank account statement on record. The bank account statement proposed to be filed by the revision petitioner/defendant is relevant for proper determination of the subject suit. Though the subject interlocutory application was filed belatedly, on the ground of delay, the right to file bank account statement of the revision petitioner/defendant ought not have been denied by the Court below.

8) Therefore, the impugned order dated 19.08.2019 passed in I.A.No.377 of 2019 in O.S.No.56 of 2018 by the learned III Senior Civil Judge, City Civil Court, Secunderabad, is set aside. Consequently, I.A.No.377 of 2019 is allowed and the revision petitioner/defendant is permitted to mark the subject bank account statement and prove the same, in accordance with the procedure established under law.

9) Accordingly, this Civil Revision Petition is allowed. No order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

Date: 12.11.2019
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