

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

CIVIL REVISION PETITION NOS.5322, 5324 AND 5325 OF 2017

COMMON ORDER:

These three Revisions arise between the same parties out of the same suit and so they are being disposed of by a common order.

The petitioner in these three Revisions is the defendant in O.S. No.78 of 2013 on the file of Senior Civil Judge, Bodhan at Nizamabad.

The said suit was filed by respondent for recovery of a sum of Rs.10,00,000/- on the basis of a promissory note dated 18.09.2010 executed by the petitioner allegedly in favour of the respondent.

It is the contention of the respondent that the said promissory note is evidence of borrowing of money Rs.10,00,000/- by the respondent from him.

After the trial concluded and the matter was posted for arguments, the petitioner filed I.A. No.82 of 2017 to reopen the matter, I.A. No.81 of 2017 to summon a witness who was an Advocate in Biloli, Maharashtra State and had translated the deposition of the respondent from Marathi to English in S.C.C. No.65 of 2014 before the I Additional Judicial Magistrate of I Class, Biloli.

It is contended by petitioner that the said criminal case was filed under Sections 323 and 504 IPC by the petitioner against the respondent and the petitioner examined himself as P.W-1 and deposed and admitted in cross-examination therein that he borrowed money from the respondent and issued a cheque, but in the evidence when the petitioner was examined as D.W-1 in this suit, he did not admit the same.

I.A. No.83 of 2017 was filed to receive the said deposition which was in Marathi language.

These three applications were dismissed on 05.07.2017 by the court below.

Thereafter, the respondent filed I.A. No.114 of 2017 to reopen the matter, I.A. No.116 of 2017 to summon the Advocate at Biloli as a witness under Order XVI Rule 1(3) CPC and I.A. No.108 of 2017 to receive the certified copy of the deposition of the petitioner as P.W-1 in SCC No.65 of 2014, which is in Marathi.

By a separate order dated 14.09.2017, these three applications were allowed by the court below.

Challenging the same, these three revisions are filed.

Counsel for the petitioner contended that the statement made by the petitioner in the criminal case is not admissible in evidence and in any event it was not confronted to him, when he was in the witness box in the suit and when the matter was posted for arguments, the court below could not have entertained these three applications and allowed the same. It was also pointed out that I.A. No.83 of 2017 filed earlier under Order VII Rule 14(3) by the respondent to receive the true translation of the deposition was disposed of on 05.07.2017 itself, and at a belated stage, I.A. No.108 of 2017 is filed on 30.06.2017, when the matter is posted for arguments.

Counsel for the respondent refuted the said contention and supported the order passed by the court below. He contended that the doctrine of resjudicata alone was pleaded in the court below and was rightly rejected by the court below and, therefore, the respondent should be permitted to reopen the case and recall the said witness

and also the said deposition of P.W-1 in the criminal case at Biloli should be received.

Noted the contentions on both sides.

It is the specific contention of the petitioner that he did not admit about the suit transaction of Rs.10,00,000/- and that he had issued a cheque in favour of the respondent in SCC No.65 of 2014 on the file of the I Additional Judicial Magistrate of I Class, Biloli. Since the petitioner is very much available, his deposition in another case cannot be marked as exhibit, particularly when there is no evidence to show that he has been confronted with the deposition in the SCC No.65 of 2014, when he was in the witness box as DW-1 in the suit. In any event, no valid reason is assigned for not producing the documents at an earlier point of time during the trial and why this document is sought to be introduced after the trial is closed.

The court below, in my opinion therefore erred in allowing IA. Nos.114 of 2017, 116 of 2017 and 108 of 2018.

For the aforesaid reasons, these three revisions are allowed; the orders passed on 14.09.2017 in I.A. No.114 of 2016, 116 of 2017 and 108 of 2017 are all set aside and the said I.As are dismissed.

M.S. RAMACHANDRA RAO, J

Date: 16.07.2019

MRKR