

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CIVIL REVISION PETITION No.207 OF 2023

O R D E R:

The Civil Revision Petition is filed against the order dated 19.11.2022 in I.A.No.1188 of 2022 in O.S.No.483 of 2021 on the file of the Principal Junior Civil Judge, Tenali.

2. Petitioner herein is the defendant, and the respondent herein is the plaintiff, in the suit before the trial Court. For sake of convenience, the parties are hereinafter referred to, as they are arrayed in the trial Court.

3. The plaintiff filed the aforesaid suit for recovery of an amount of Rs.4,11,600/- together with interest and costs against the defendant on the strength of a promissory note dated 07.02.2020. It is stated in the plaint that the defendant, to meet his family expenses, borrowed an amount of Rs.3,00,000/- from the plaintiff on 07.2.2020 and executed the suit promissory note on the even date in favour of the plaintiff at Tenali agreeing to repay the same together with interest at 24% p.a. compoundable every year either to the plaintiff or to

his order on demand. In spite of repeated demands made by the plaintiff, the defendant failed to repay the said amount. The plaintiff came to know that the defendant is trying to alienate his properties to evade the debt due under the suit promissory note. Hence the suit.

4. Defendant filed written statement contending that he worked as a Lecturer in CK Junior College, Mangalagiri and after his retirement he joined as Principal in Saint Pauls Vocational Junior College, Tenali as such he has no necessity to borrow amount from the defendant; that he has no direct acquaintance with the plaintiff; that he never borrowed any amount from the plaintiff and the suit promissory note is forged and fabricated. Hence he prayed to dismiss the suit.

5. Pending the suit, the defendant filed I.A.No.1188 of 2022 under Section 45 of the Indian Evidence Act to send the suit promissory note to Handwriting Expert for comparison of his signatures in the promissory note with his admitted signatures.

6. Counter was filed by the plaintiff opposing the said petition.

7. Trial Court, by the impugned order dated 19.11.2022, dismissed the said petition on the ground that no reason is given how the plaintiff got the custody of the document which contains the signature of the defendant for forging. It is further observed that only with a view to drag on the matter, this petition is filed by the defendant.

8. Heard both sides and perused the material on record.

9. Learned counsel for the defendant would submit that the defendant never borrowed any amount from the plaintiff and the suit promissory note is forged and fabricated and that a specific plea has been taken by the defendant in his written statement with regard to forgery and to substantiate his plea, the disputed document has to be examined by the expert.

10. On the contrary, learned counsel for the plaintiff submits that the defendant with a view to further drag on the suit proceedings, is resorting to these tactics. He further submits that the promissory note is of the year 2020 and the written statement is filed in the year 2022 and the defendant did not file any contemporaneous documents for the purpose of comparison and that the trial Court rightly dismissed the petition and there are no grounds to interfere with the same.

11. The suit is filed for recovery of money basing on suit promissory note dated 07.2.2020. The defence of the petitioner/defendant is one of forgery. The suit is at the stage of trial. The present petition is filed at that stage to send the suit promissory note to the Handwriting Expert for comparison of the signatures of the executant of the promissory note along with signatures on the vakalat and written statement of the defendant. The said petition was dismissed by the trial Court. The reason cited by the trial Court is that it is not pleaded in the petition how the plaintiff got the custody of the document which contains the signatures of the defendant for forging.

Though the same is not a sole ground to dismiss the petition filed under Section 45 of the Indian Evidence Act, however, the defendant has to produce the contemporaneous documents containing his admitted signatures for the purpose of comparison with the disputed signatures. Without doing so, the defendant prayed to compare the disputed signatures on the suit promissory note with the signatures on vakalat and written statement.

12. In **Taidala Yesupadam and another vs. Burugu Sreenu**¹, this Court, in fact, held that the party, who is making application to send the document to expert to compare the signature, should assert and file authentic documents containing his or her signatures along with I.A. and without making available the admitted signatures, ordering interlocutory application, will not serve any purpose.

13. In the case on hand, defendant did not file any authentic document containing the admitted signatures for comparison. Unless defendant files authentic document

¹ 2023 (1) ALT 343 A.P.

containing his admitted signatures, the question of sending promissory note to handwriting expert for comparison does not arise. Hence, this revision is liable to be dismissed.

14. Accordingly, this Civil Revision Petition is dismissed. However the defendant is at liberty to make a fresh application along with contemporaneous documents containing his admitted signatures for the purpose of comparison with the disputed signatures. No costs.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

K.SREENIVASA REDDY, J.

Date: 07.02.2024.
DNV/DRK/GR