

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No.1274 OF 2023

Between:

G.V. Chennakesavulu and another

....Petitioners

Versus

\$ 1. G.R. Madhusudhan (died)

2. G.M.Sai Nithesh and another

.....Respondents

DATE OF JUDGMENT PRONOUNCED:19.06.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
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! Counsel for the Petitioners: Sri M. Chalapathi Rao

^ Counsel for the respondents: Nil

< Gist :

> Head Note:

? Cases Referred:

¹ AIR 1973 AP 309

² (1995) 4 SCC 244

³ (1993) 3 SCC 573

⁴ (1983) 4 SCC 36

⁵ (2003) 3 SCC 524

⁶ (2003) 6 SCC 641

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**CIVIL REVISION PETITION No.1274 OF 2023****JUDGMENT:**

Heard Sri M.Chalapathi Rao, learned counsel for the petitioners.

2. The respondents are the plaintiffs in O.S.No.328 of 2015 on the file of III Additional Senior Civil Judge, Chittoor. The suit is filed for a decree against the defendants-petitioners directing them to pay the suit amount with interest, based on the alleged promissory note dated 01.10.2012 in favour of the plaintiffs, executed for the loan taken by the defendants.

3. The petitioners filed written statement inter alia denying taking of loan, execution of the promissory note, and the cheque, which as per the pleadings, are fabricated.

4. The petitioners filed I.A.No.92 of 2023 in O.S.No.328 of 2015, to issue summons to examine the scribe Sri K. Kishore Kumar, one of the attesters Sri K. S. Chandra Kumar of the promissory note and also one Sri G. Ramesh, Advocate, Chittoor.

5. It was pleaded, inter alia that the scribe of the promissory note gave to the petitioners a letter dated 25.01.2016, attested

by a notary public, that the promissory note was fabricated. Copy of the said letter was filed and submitting that the proposed witnesses told the petitioners that, they would give evidence after summons are issued by the Court, I.A.No.92 of 2023 was filed.

6. The plaintiffs/respondents opposed I.A.No.92 of 2023. They filed counter. Their objection was that, the application was a devise to prolong the litigation. The original of the letter dated 25.01.2016, was not filed. It was also, an objection that, the said letter is subsequent to filing of the suit and was not relevant. The proposed witnesses were the private witnesses, which the petitioners, if they so desired, could produce of their own. The proposed witnesses were neither public officials nor Corporation officials. In the affidavit of D.W.1, it was nowhere mentioned that the witnesses proposed to be examined are hostile to the petitioners are not available and their presence could be secured only through the Court. Further, the petitioners volunteered that their witnesses are going to be examined on their side. It was only afterthought that, the letter dated 25.01.2016 was created. There was no ground to allow the application.

7. The learned Additional Senior Civil Judge, Chittoor by order dated 17.04.2023 dismissed the I.A.No.92 of 2023.

8. The learned counsel for the petitioners submitted that the suit promissory note was fabricated. The scribe of the alleged suit promissory note wrote a letter dated 25.01.2016 to that effect which was duly attested by a notary public. Consequently to prove the letter dated 25.01.2016 as also that the promissory note was fabricated, summoning of the proposed witnesses was required.

9. Learned counsel for the petitioners placed reliance in the case of **Gopala Krishna Murthy vs. B. Ramachander Rao and others**¹ to contend that under Order 16 Rule 1 CPC, it is the right of the party at any stage of the suit to make application to the court seeking that summons be issued to the witnesses either to give evidence or to produce documents, and the court is not to refuse such an application on the ground that it might cause delay in the trial of the suit.

10. I have considered the submissions advanced and perused the material on record.

¹ AIR 1973 AP 309

11. The point for determination is whether the order dated 17.04.2023 rejecting the I.A.No.92 of 2023 under Order XVI Rule 1 CPC deserves to be quashed?

12. Order 16 Rule 1 CPC reads as under:

“Order XVI – Summoning and Attendance of Witnesses

1. LIST OF WITNESSES AND SUMMONS TO WITNESSES.

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such person for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf.”

13. As per Order 16 Rule 1, the list of witnesses is to be submitted by the plaintiff and by the defendants. Under sub rule (2) of rule 1 of Order 16 CPC, the party desirous of obtaining any summons for the attendance of any person as witness has to file an application in the court stating therein the purpose for which the witness is proposed to be summoned. Sub rule (3) of rule 1 confers a discretion, for the reasons to be recorded, to permit a party to call by summoning through court or otherwise, any witness other than those whose names appear in the list of witnesses submitted under sub rule (1).

14. The learned Additional Senior Civil Judge, has recorded that the witnesses sought to be summoned are the private witnesses and not the official witnesses. When the witnesses are willing to depose evidence on behalf of the petitioners-defendants, they can come to the court to give evidence. The witnesses cannot demand the summons from the court. The learned trial court has noted further in the order, that the D.W.1 during his cross-examination deposed that he will examine Kishore Kumar, who is the scribe, and Chandra Kumar who is one of the attestors of the promissory note (Ex.A-1), and none prevented the petitioners to examine those witnesses on

their behalf. On the aforesaid reasons, learned trial court rejected I.A.No.92 of 2023.

15. The trial court is vested with the discretion under order 16 rule 1(3) CPC. The exercise of discretion, in the facts of the case and on the reasons assigned in the order itself, cannot be said to be an exercise not judiciously made.

16. At this stage, reference may be made to Order XVI Rule 1-A CPC. It reads as under:

“1A. Production of witnesses without summons.-

Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.”

17. In **Vidhyadhar vs. Manikrao and another**², the Hon’ble Supreme court held that these two rules i.e. Order XVI Rule 1 and 1-A, read together clearly indicate that it is open to a party to summon the witnesses to the Court or may, without applying for summons, bring the witnesses to give evidence or to produce documents. Sub-rule (3) of Rule 1 provides that although the name of a witness may not find place in the list of witnesses filed by a party in the Court, it may allow the party to produce a

² (1993) 3 SCC 573

witness though he may not have been summoned through the Court. Rule 1A which was introduced by the CPC (Amendment) Act, 1976 with effect from 1.2.1977 has placed the matter beyond doubt by providing in clear and specific terms that any party to the suit may bring any witness to give evidence or to produce documents. Since this Rule is subject to the provisions of Sub-rule (3) of Rule 1, all that can be contended is that before proceeding to examine any witness who might have been brought by a party for that purpose, the leave of the Court may be necessary but this by itself will not mean that Rule 1A was in derogation of Sub-rule (3) of Rule 1.

18. In **Vidhyadhar** (supra), the Hon'ble Apex Court referred its earlier judgment in **Mange Ram v. Brij Mohan and Others**³, in which it was held that Sub-rule (3) of Rule 1 and Rule 1A operate in two different areas and cater to two different situations.

19. It is apt to refer paragraphs 29 to 31 of **Vidhyadhar** (supra) as under:

“29. Summoning and attendance of witnesses has been provided for in Order 16 of the CPC. Order 16 Rule 1 which speaks of list of witnesses and summons to witnesses provides as under:

³ (1983) 4 SCC 36

Rule 1. List of witnesses and summons to witnesses.

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summons to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in Sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of Sub-rule (2), summons referred to in this rule may be obtained by parties on an application to the Court or to such officer as may be appointed by the Court in this behalf.

30. Rule 1A which allows production of witnesses without summons provides as under:

Rule 1A. Production of witnesses without summons.

Subject to the provisions of Sub-rule (3) of Rule 1, any party to the suit may, without applying for summons under Rule (1), bring any witness to give evidence or to produce documents.

31. These two Rules read together clearly indicate that it is open to a party to summon the witnesses to the Court or may, without applying for summons, bring the witnesses to give evidence or to produce documents. Sub-rule (3) of Rule 1 provides that although the name of a witness may not find place in the list of witnesses filed by a party in the Court, it may allow the party to produce a witness though he may not have been summoned through the Court. Rule 1A which was introduced by the CPC (Amendment) Act, 1976 with effect from 1.2.1977 has placed the matter beyond doubt by providing in clear and specific terms that any party to the suit may bring any witness to give evidence or to produce documents. Since this Rule is subject to the provisions of Sub-rule (3) of Rule 1, all that can be contended is that before proceeding to examine any witness who might have been brought by a party for that purpose, the leave of the Court may be necessary but this by itself will not mean that Rule 1A was in derogation of Sub-rule (3) of Rule 1. The whole position was explained by this Court in [Mange Ram v. Brij Mohan and Ors.](#) , in which it was held that

Sub-rule (3) of Rule 1 and Rule 1A operate in two different areas and cater to two different situations”.

20. In **Lalitha J Rai vs. Aithappa Rai**⁴, the Hon’ble Apex Court held that Order 16 Rules 1 and 1(A) adumbrate that the witness at the trial court are to be produced for examination by the parties by their filing the list, and omission thereon prohibits them to avail the assistance of the court to secure their attendance to give evidence or to produce documents on their behalf. It is true that the legislature amended Order 16 Rule 1 and added rule 1A to see that the undue delay should not be caused in the trial of the suit by filing list of witnesses or the documents at belated stage. Thereby, it envisages that on or before the date fixed by the court for settlement of issues and not later than 15 days after the date on which issues were settled, the parties are to file the list of such witnesses whom they propose to call either to give evidence or to produce documents and they are required to obtain summons to such witnesses for their attendance in the court. On their failure to do the same, Rule 1A says that they may without assistance of the court bring witnesses to give evidence or to produce documents. In other words, if they fail to obtain the summons through court for attendance of witnesses they are at liberty to

⁴ (1995) 4 SCC 244

have the witnesses brought without the assistance of the Court. It would, thus, be seen that the legislature did not put a total prohibition on the party to produce the witnesses or the production of the documents for proof of the respective case. Nonetheless, when they seek the assistance of the Court, they are enjoined to give reasons as to why they have not filed the application within the time prescribed under Rule 1 of Order 16 CPC.

21 Relevant part of paragraphs 3 and 4 of **Lalitha J Rai** (supra) is reproduced as under:

“3. Order 16 Rules 1 and 1(A) adumbrate that the witness at the trial court are to be produced for examination by the parties by their filing the list, and omission thereon prohibits them to avail the assistance of the court to secure their attendance to give evidence or to produce documents on their behalf. It is true that the legislature amended Order 16 Rule 1 and added rule 1(A) to see that the undue delay should not be caused in the trial of the suit by filing list of witnesses or the documents at belated stage. Thereby, it envisages that on or before the date fixed by the court for settlement of issues and not later than 15 days after the date on which issues were settled, the parties are to file the list of such witnesses whom they propose to call either to give evidence or to produce documents and they are required to obtain summons to such witnesses for their attendance in the court. On their failure to do the same, Rule 1(A) says that they may without assistance of the court bring witnesses to

give evidence or to produce documents. In other words, if they fail to obtain the summonses through court for attendance of witnesses they are at liberty to have the witnesses brought without the assistance of the Court.

4. It would, thus, be seen that the legislature did not put a total prohibition on the party to produce the witnesses or the production of the documents for proof of the respective case. Nonetheless, when they seek the assistance of the Court, they are enjoined to give reasons as to why they have not filed the application within the time prescribed under Rule 1 of Order 16.”

22. Consequently, the petitioners’ opportunity to produce the proposed witnesses is still not closed. The impugned order also says that the petitioners can produce the witnesses on their behalf. The only thing is that the petitioners can do so without the assistance of the court.

23. In **Gopala Krishna Murthy** (supra) relied upon by the learned counsel for the petitioners, the Andhra Pradesh High Court held as under:

“9. A reading of the above authorities leads me to lay down the following propositions.

(1) Under Order 16, Rule 1, Civil P. C. it is the right of the party at any stage of the suit to make an application to the Court seeking that summons be issued to a witness either to give evidence or to produce documents.

(2) The Court is not entitled to refuse such an application on the ground that it might cause delay in the trial of the suit on the adjourned date of the suit.

(3) If the summons is not served by the adjourned date of the suit the party who filed the application to issue the summons would take the risk.

(4) If an application for an adjournment is made at the instance of the party who applied under Order 16, Rule 1, Civil P. C. it is for the Court to consider whether or not an adjournment should be granted.

(5) The Court may not refuse to order an application under Order 16, Rule 1, Civil P. C. on the ground that the evidence, if produced, may not be of any help to the applicant.

(6) Though Order 16, Rule 1, Civil P. C. does not in terms impose any restrictions on the Court, the Court in the exercise of its inherent jurisdiction may refuse to issue summons in an application made under O. 16, R. 1, Civil P. C. in those cases where it is satisfied that the application filed was not bona fide or was vexatious or granting the application would result in an abuse of process of the Court. Except in these three above contingencies the application must almost always be ordered.”

24. Reliance, in **Gopal Krishna Murthy** (supra) is misplaced.

In the present case, the rejection of the petitioners' application is not on a ground on which it could not be rejected as per the propositions laid down in the above judgment. The ground of rejection, here, is that the petitioners can produce witnesses and the witnesses cannot demand the summons from the court for their leading of evidence.

25. I do not find any illegality in the order under challenge so as to interfere with the same in the exercise of jurisdiction under Article 227 of the Constitution of India.

26. In **Sadhana Lodh v. National Insurance Co. Ltd.**,⁵ the Hon'ble Apex Court held that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In **State v. Navjot Sandhu**⁶, the Hon'ble Apex Court held that the power of judicial superintendence under Article 227 of the Constitution of India must be exercised sparingly and only to keep subordinate Courts and Tribunals within the bounds of their authority and not to correct mere errors.

27. In the result, the civil revision petition is dismissed at the admission stage. No order as to costs.

Consequently, the miscellaneous petitions, if any, pending in the petition shall stand closed.

RAVI NATH TILHARI, J

Date:19.06.2023

Note:

L.R copy to be marked. B/o.Gk

⁵ (2003) 3 SCC 524

⁶ (2003) 6 SCC 641

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No.1274 OF 2023

Date:19.06.2023

Gk