

(2011) 11 KAR CK 0221

In the Karnataka High Court

Case No : Writ Petition No. 40895 of 2011 (GM-CPC)

Mr. K.H. Panduranga

APPELLANT

Vs

Sri Narasimha Gowda

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10A, 151

Citation : (2011) 11 KAR CK 0221

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Showri H.R, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Mrs. Justice B.V. Nagarathna

1. This writ petition is filed by the defendant in O.S. No. 434/2010, assailing the order passed on 12/10/2011 on an application filed under Order XXVI Rule 10(A) r/w Section 151 of CPC. The said application has been dismissed, against which this writ petition has been preferred.

2. The relevant facts of the case are that the respondent has filed the suit against the petitioner herein seeking recovery of a sum of Rs. 82,000/- with interest at 24% p.a. from the date of the suit till realisation. In the said suit, the petitioner filed an application under Order XXVI Rule 10(A) r/w 151 of CPC. The said application has been dismissed. Being aggrieved by the said order, this writ petition has been preferred.

3. I have heard the Learned Counsel for the petitioner, He would submit that the petitioner has admitted his signature on the cheque Ex. P.1. However, the said cheque was not issued to the respondent herein but it was issued to one Boralingaiah and that there has been no transaction between the parties in the instant case. Therefore, in order to ascertain the age of the signature of the petitioner on Ex. P.1, the application was filed. The said application ought to have

been allowed so that the petitioner could have proved his case with regard to the fact that the said cheque was issued to Boralingaish and not to the respondent herein. In support of his submission, he has placed reliance on the decision of Apex Court in T. Nagappa v. Y.R. Muralidhar 2008(5) K.L.J. 112 (SC).

4. Having heard the Learned Counsel for the petitioner and on perusal of the material on record, it is not in dispute that the petitioner herein has executed the cheque, which is a blank cheque at Ex. P.1. The signature of the petitioner on the said cheque is admitted by him. However, the case of the petitioner is that the petitioner had no transaction with the respondent. The said cheque was issued to some other person and the same has been misused by the respondent. In order to prove the said case of the petitioner, it would not be necessary to get the age of the signature of the petitioner on the cheque determined, since the main case of the petitioner is that there has been no transaction between the parties and the said cheque has not at all been issued to the respondent, Therefore, when the signature of the petitioner is admitted on Ex. P.1, the contention of the petitioner that the age of the signature on the said cheque could determine the transaction between the petitioner and respondent, cannot be accepted. When the signature of the petitioner on Ex. P.1 is admitted, it is for the petitioner to establish his case that he has had no transaction with the respondent herein. Therefore, the order of the trial Court would not call for any interference in this writ petition.

5. The decision of the Apex Court referred to above can be distinguished by the fact that in the said decision, a blank cheque was handed over by way of security for a hand loan by the accused to the complainant and after the amount was returned, the blank cheque was not returned to the accused and the same was made use of for the purpose of registering a criminal complaint. In the instant case, the contention of the petitioner is that no cheque has been issued to the respondent - plaintiff as there was no transaction. Such being the contention of the petitioner, no purpose would be served in getting the age of the signature of the Ex. P.1 determined by sending the same to a forensic laboratory. The said contention has been rightly rejected by the trial Court. In the result, the writ petition is rejected.