
(2016) 11 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 42438 of 2016

Sri. B. G. Mruthyunjaya

APPELLANT

Vs

State Bank of Mysore, Chitradurga

RESPONDENT

Date of Decision : 05-11-2016

Acts Referred:

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

Citation : (2017) 2 AirKarR 742

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Srikanth A., Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

B. Veerappa, J.—This is the defendant's writ petition against the Order dated 20.07.2016 on I.A. No.3 in O.S. No.246/2010 on the file of the II Addl. Civil Judge, Chitradurga rejecting the suit filed by the defendant under Order 26, Rule 10 (A) of the Code of Civil Procedure for appointment of a Court Commissioner for scientific investigation to verify and compare the undisputed signatures of defendant No.1 found in Exs.P-1 to P-4 and disputed signatures found in Ex.P-6 to P-11.

2. The 1st respondent who is plaintiff/Bank had filed a suit for recovery directing the defendants to pay the plaintiff a sum of Rs. 1,39,934/- together with interest at 11.5% per annum compounded monthly from the date of the suit till the date of realization contending that the defendants 1 and 2 are the borrower and the guarantor respectively. Defendant No.1 was doing business and he is proprietor of Mruthyunjaya Motors and defendant No.2 was also doing business. Both were having sufficient income in their respective business. The 1st defendant had approached the plaintiff/bank for financial assistance of Rs. 75,000/- as cash credit facility and other bona fide purpose for the said business. Accordingly, the bank had agreed to assist the 1st defendant and the 1st defendant had executed on demand promissory note. The second defendant stood as guarantor for the

aforesaid loan transaction. Accordingly, the 1st defendant has borrowed a sum of Rs. 75,000/- on 28.11.2001 by executing the on demand promissory note with DP Note Delivery Letter with other necessary documents i.e., Form No.12 and Form No.8 to secure an advance against hypothecation of goods for the advance and the defendants have also executed other necessary documents in favour of the bank by agreeing to repay the loan with interest at the rate of 12% per annum compounded monthly subjected to the guidelines of the Reserve Bank of India from time to time. The 2nd defendant had also executed the Guarantor Agreement for advances on 28.11.2001 as a guarantor. It is further case of the plaintiff that in spite of repeated requests, the defendants have not paid the loan amount with accrued interest with costs. Therefore, he has issued notice to the defendants and the defendants sent the reply on 14.05.2009. Hence, the plaintiff filed the suit.

3. The 2nd defendant/guarantor has not filed written statement. Only the 1st defendant/borrower has filed written statement, denying all the averments made in the plaint and contended that the suit filed by the plaintiff is barred by limitation and prays for dismissal of the suit. After completion of the evidence of both sides, when the matter posted for arguments, the 1st defendant filed application under Order 26, Rule 10 (A) of Code of Civil Procedure for appointment of a Court Commissioner for scientific investigation to verify and compare the undisputed signature of defendant No.1 found in Exs.P-1 to P-4 and disputed signatures found in Exs.P-6 to P-11, contending that he had approached the plaintiff/bank for financial assistance and borrowed only Rs. 60,000/- in the beginning of year 2000 and the said amount was cleared. The plaintiff/bank without giving proper accounts and maintaining proper statement, is claiming time barred debt. As such, the question of repayment does not arise and the plaintiff is not entitled for the relief sought for. He further contended that Exs.P-6 to P-11 are all false and forged documents to enforce debt, giving life to the dead account. The signatures found in Exs.P-6 to P-11 documents does not belong to the defendants. They have forged for creating the said documents and therefore it is necessary to verify the undisputed signatures found in Exs.P-1 to P-4. Therefore, hand writing experts required to be appointed for scientific investigation to verify the signatures and to compare the signatures as referred supra and submit his report to this Court. Hence, prayed to allow the application.

4. The said application was resisted by the plaintiff by filing objections and reiterated the plaint averments and contended that the 1st defendant borrowed loan on 28.11.2001 by executing on demand promissory note and other necessary documents and contended that the 1st defendant intentionally denied the signatures on said documents though he signed the same in person in the bank with an intention to escape from his legal liability and legal responsibility, he denied his signatures. DW-1 in cross-examination also denied the same and further contended that the signatures found in all the exhibits which were filed by the plaintiff before the court are the signatures of the 1st defendant and also the guarantor. The legal representatives of the 2nd defendant clearly admitted the

loan transaction and also responsibility of the 1st defendant and the application is filed when the argument of the plaintiff was already over, at a belated stage, only to protract the proceedings, etc., prays for dismissal of the application.

5. The trial Court, after considering the application and objections, by the impugned order dated 20.07.2016, rejected the application filed by the defendant under Order 26, Rule 10 (A) of the Code of Civil Procedure. Hence the present writ petition is filed.

6. I have heard the learned counsel for the petitioner.

7. Sri. A. Srikanth, learned counsel for the petitioner vehemently contended that the trial Court is not justified in rejecting the application without appreciating the importance of definite opinion of handwriting expert as it was a clinching evidence to decide the matter in dispute. The signatures found on Exs.P.6 to P.11 are denied by the petitioner/defendant No.1. Therefore, under those circumstances the trial Court ought to have allowed the application and ought to have referred the documents for comparison of the signatures. The trial Court erred in assigning reasons and has only referred to the contentions put forth by the plaintiff-bank. Learned counsel contended that the observation of the trial Court that the defendant has not identified his signature correctly during cross-examination on Ex.D.1 is erroneous as the witness had no opportunity to have a look at the entire document but what was shown to him was only a portion of the document consisting of certain signatures. Therefore, he sought to set-aside the impugned order passed by the trial Court by allowing the writ petition.

8. In view of the aforesaid arguments advanced by the learned counsel for the petitioner, the only point that arises for consideration in this writ petition is:

"Whether the trial Court is justified in rejecting the application filed by the 1st defendant under Order 26, Rule 10 (A) of the Code of Civil Procedure, in the fact and circumstances of the case?"

9. I have given my anxious consideration to the arguments advanced by the learned counsel for the petitioner and perused the entire material on record.

10. It is the definite case of the plaintiff bank that defendant Nos.1 and 2 are the borrower and guarantor. The 1st defendant borrowed Rs. 75,000/- on 28.11.2001 by executing on demand promissory note with DP note delivery letter with other necessary agreements and in spite of repeated demand and notice, defendants have not repaid the amount borrowed. The 1st defendant denied the entire plaint averments and specifically contended that he has borrowed only Rs. 60,000/- and repaid the entire amount and the present suit filed by the plaintiff is barred by limitation and the suit is not maintainable.

11. Now, both the parties have adduced evidence and produced their respective documents to establish their case independently and it is not in dispute that the plaintiff counsel has completed his arguments on the main matter. When the matter was posted for defendants- evidence, the present application was filed for

appointment of Court Commissioner for scientific investigation to verify and compare the undisputed signature of defendant No.1 (DW-1) found in Exs.P.1 to P.4 and signature found in the deposition of D.W.1 with the disputed signatures found in Exs.P.6 to P.11. The trial Court, considering the entire material on record, recorded a finding that it is admitted fact that defendant No.1 has borrowed a loan from plaintiff bank, he only denied quantum of amount and execution of letter of commitment and defendant No.1 has not made out any ground at this stage to refer the document to handwriting expert to compare the signatures found in Exs.P.1 to 4 with Exs.P.6 to P.11 and application filed is only to drag the proceedings and is liable to be dismissed.

12. Sri. A. Srikanth, learned counsel for the petitioner has pointed out that the trial Court while deciding the application has recorded a finding that there is no special interest on the part of the plaintiff bank, because the public interest is involved in the bank, not independent and there is no necessity to create documents as contended by the learned counsel for the defendant. The trial Court should not have made such observations while deciding the application under Order 26, Rule 10 (A) of the Code of Civil Procedure and it is for the plaintiff bank to prove that the 1st defendant has borrowed loan and 2nd defendant has stood as guarantor and they have not repaid the amount as contended by the 1st defendant in the written statement.

13. It is also not in dispute that the 1st defendant by filing written statement, denied the entire plaint averments including the signatures. It is for the bank to establish its case independently based on oral and documentary evidence adduced and produced by the bank. If initial burden is discharged by the bank, then defendant has to prove that he has not borrowed and has repaid the amount. In the circumstances, when the arguments of the plaintiff was completed and matter was posted for defendants- arguments, appointment of Court Commissioner would not arise. It is for the parties to prove their case independently with reference to the documents produced in the suit. Therefore, the trial Court is justified in rejecting the application.

14. For the reasons stated above, the point raised in the writ petition has to be answered in the affirmative holding that the trial Court is justified in rejecting the application filed under Order 26, Rule 10 (A) of the Code of Civil Procedure, same is in accordance with law.

15. In view of the aforesaid reasons, the impugned order is just and proper, no interference is called for under Article 227 of the Constitution of India. Accordingly, writ petition is dismissed. However, it is clarified that the trial Court while deciding the suit shall not in any way influenced by the observations made in this petition and shall decide the case independently based on the oral and documentary evidence adduced the parties, and strictly in accordance with law.