

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

-

**CIVIL REVISION PETITION No.3204 OF 2015**

-

**ORDER :**

-

Assailing the order dated 09.07.2015 in I.A.No.180 of 2015 in O.S.No.16 of 2013 on the file of the Additional Senior civil Judge at Karimnagar, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

The facts, which lead to filing of the present Civil Revision Petition, are as under :

The respondent/plaintiff filed O.S.No.16 of 2013 on the file of the Senior Civil Judge at Karimnagar for recovery of an amount of Rs.6,00,000/- with future interest at the rate of 12% p.a., from the dte of suit till the date of realization. The petitioner/defendant filed his written statement opposing the same. The trial in the said suit commenced and the plaintiff examined P.Ws.1 to 3 on his side apart from marking certain documents. The defendant examined D.Ws.1 and 2 and got marked Ex.B-1. After completion of the evidence of D.W.2, the present I.A., came to be filed by the defendant under Section 45 of the Evidence Act for sending Ex.B-1 to an handwriting expert. The averments in the I.A., shows that since the plaintiff denied the execution of Ex.B-1 the same needs to be sent to an handwriting expert to establish that it was issued by the plaintiff. A counter came to be filed by the plaintiff opposing the same on the ground that the application has been filed only with a view to cause delay to the proceedings and having regard to the circumstances it may not be necessary to send the document to an expert. The trial court after hearing both sides, rejected the said request by observing as under :

“Further the law is well settled that the opinion of an expert with regard to the signature or handwriting in the disputed document is not conclusive, but it is

only a piece of evidence which requires to be taken into consideration along with other evidence produced by the parties and ultimately it is for the court to arrive at its own conclusion on the appreciation of entire evidence available on record.

Having regard to the facts and circumstances, and particularly keeping in view that the necessary evidence was already adduced by both parties in support of their claim and the application made lacks bonafides and further as I feel that the court can record a finding on disputed document with the available material. I am of the view that there is no necessity to send the document Ex.B-1 to the Expert for his opinion.”

Challenging the same, the present Civil Revision Petition is filed.

The learned counsel for the petitioner submits that sending of Ex.B-1-receipt issued by the plaintiff is verymuch essential to decide the case on hand and the defendant will be put great prejudice if the said document is not send to the Expert.

As stated earlier, the learned counsel for the respondent opposed the application contending that though the defendant took the said plea in the written statement, no effort was made till the case is posted for defendant’s arguments. This fact is sufficient to show that the present application is made only with a view to delay the proceedings. It is well established principle of law that the evidence of an handwriting expert is not a conclusive piece of evidence to establish the signature and handwriting of the disputed document. It is only a piece of evidence which requires to be taken into consideration along with other evidence adduced by the parties. It is also to be noted that under Section 73 of the Indian Evidence Act the Court can compare the writings on the disputed documents with the admitted writings to decide as to whether the said document was issued by the plaintiff or not.

As seen from the record, the defendant in his written statement pleaded that evenafter paying the total amount, the plaintiff did not handover the pronote on the ground that it was misplaced. But the plaintiff is alleged to have issued a receipt for Rs.25,000/- and assured to handover the pronote as and when it is traced. But due to some disputes between the plaintiff and defendant, the defendant

mis-utilized the pronote and filed a suit for Rs.5,00,000/-. According to him, the defendant never borrowed an amount of Rs.5,00,000/- from the plaintiff. The written statement in this suit was filed in the month of April 2014. In the cross-examination of P.W.1 on 15.09.2014, it was suggested to him about the execution of the receipt (Ex.B-1) by the plaintiff, which was denied by P.W.1. Though the said suggestion was given to P.W.1 was denied in the month of September 2014 itself, no steps were taken by the defendant to send the document to handwriting expert. Though the chief-examination of D.W.1 dated 05.12.2014 discloses about the repayment of the amount of Rs.25,000/- on 07.09.2012 by the defendant to the plaintiff and also issuance of receipt (Ex.B-1) for Rs.25,000/- by the plaintiff, no steps were taken at that point of time also in getting the document examined by an handwriting expert till completion of evidence of D.W.3 on 18.06.2015. As stated earlier, even the written statement filed in April 2014 refers to this fact.

The learned counsel for the petitioner relied upon a judgment of this Court in **Guru Govindu v. Devarapu Venkataramana**, wherein this Court having regard to the circumstances of the said case held that a party can file an application for sending the document even at the stage of arguments. This Court also held that the opinion rendered by an expert is only a supporting material and cannot be treated as a conclusive. Ultimately, it was held that it is for the court to come to a conclusion as to genuinity or otherwise of the signatures. This Court held that if the Court is capable of forming an opinion on the strength of oral and documentary evidence before it in the exercise undertaken under Section 73 of the Act, the necessity to send the document for Expert's opinion may not arise. On the other hand, even at the stage of hearing, if the Court feels that it must seek the help of an Expert in coming to a proper conclusion, it can send the document on its own accord by requiring the party concerned to meet the expenditure. As seen from the order, the ground on which the application is rejected was that the petitioner has come to the Court at belated stage and the Court did not express any view with regard to

the necessity of the opinion of an Expert.

In view of the observations made by this Court in the judgment referred to above, it is held that if the trial court is capable of forming an opinion on the strength of the oral and documentary evidence before it, it can exercise the action under Section 73 of the Evidence Act, otherwise if it is of the view that the opinion of the Expert is necessary to come to a proper conclusion of the case, it is always open to the court to send the document on its own in terms of judgment of this Court.

With the above observation, the Civil Revision Petition is disposed of. No costs. Miscellaneous petitions pending if any in this Civil Revision Petition shall stand closed.

---

**C.PRAVEEN KUMAR,J**

Dt: 30.09.2015

GM