

**THE HON'BLE SRI JUSTICE S.V. BHATT**

**CIVIL REVISION PETITION No.2023 of 2015**

**ORDER:**

Judgment debtor (J.Dr) in E.P.No.6 of 2010 is the revision petitioner. This revision petition is directed against the order dated 16.04.2015 in E.A.No.1 of 2010. The J.Dr filed the instant application under Order 21 Rule 2 (2) of C.P.C., to record full satisfaction of the decree dated 16.11.2009 in O.S.No.22 of 2006 in the Court of V Additional District Judge, Nellore.

The case of J.Dr is that he filed A.S.No.151 of 2010 against the decree and judgment dated 16.11.2009 in O.S.No.22 of 2006. On 31.03.2010 in A.S.M.P.No.413 of 2010 this Court granted conditional order of stay of decree and judgment, which reads as follows:

“Heard both the sides.

Having regard to the fact the decree is being one for money, there shall be stay, pending disposal of the appeal, subject to the petitioner depositing half of the decretal amount and costs within a period of eight (8) weeks from today. On such deposit, the respondent is permitted to withdraw the same without furnishing any security. Notice.

Office to expedite the hearing the appeal.”

On 7.06.2010 JDR/appellant herein filed E.A.No.1 of 2010 for recording full satisfaction of the decree in O.S.No.22 of 2006. On 10.06.2010, D.Hr/respondent herein filed A.S.M.P.No.2398 of 2010 for vacating the interim order dated 31.03.2010 passed in A.S.M.P.No.413 of 2010. On 6.12.2010 a Division Bench of this Court vacated the interim order thus –

“Heard both the sides.

Admittedly, the conditional order has not been complied with and no amount has been paid so far. In view of the same, the interim order dated 31.03.2010 stands vacated.

Accordingly, ASMP.No.413 of 2010 is dismissed and ASMP No.2398 of 2010 stands allowed.”

Keeping in mind the developments referred to supra, I refer to the averments in the affidavit filed along with E.A.No.1 of 2010.

The J.Dr states that due to his old age and to avoid litigation the J.Dr paid an amount of Rs.7,00,000/- as per the mediation and settlement arrived at between the J.Dr and the D.Hr. In proof of payment of Rs.7,00,000/- the J.Dr relies upon the undertaking dated 15.05.2010 purportedly executed by D.Hr. Having regard to the undertaking dated 15.05.2010, the J.Dr requests the Executing Court to record full satisfaction of decree in O.S.No.22 of 2006.

D.Hr filed counter opposing E.A.No.1 of 2010. In the counter it is denied that there was any mediation between the parties and muchless settlement was arrived at to receive a sum of Rs.7,00,000/- in full satisfaction of E.P. amount i.e., Rs.15,68,000/-. It is contended that the undertaking dated 15.05.2010 is a rank forgery. D.Hr points out intrinsic contradictions in the undertaking dated 15.05.2010 to contend that it is completely improbable that as against the amount due and payable, an out of Court settlement for a sum of Rs.7,00,000/- is agreed in the mediation, and the amount is received by D.Hr.

In view of complete denial of mediation, settlement, receipt of Rs.7,00,000/- and execution of undertaking dated 15.05.2010, the Executing Court permitted the parties to adduce oral and documentary evidence in E.A.No.1 of 2010. On behalf of JDR PWs.1 to 5 were examined and Exs.A.1 to A.5 were marked. On half of DHR RWs.1 to 3 were examined and Exs.B.1 to B.8 were marked and also Exs.X1 to X.4 through PW.5. The Executing Court has framed the following point for consideration.

“Whether the petitioner/J.Dr paid Rs.7,00,000/- to respondent (D.Hr) under Ex.A.1, which is undertaking in full and final settlement of E.P. amount?”

Before adverting to the findings of fact recorded by the Executing Court, the following circumstances are noticed from the material available on recorded.

a) This Court on 31.03.2010 while granting stay of decree and judgment granted eight weeks time to the J.Dr to deposit half of the decretal amount. The said eight weeks time expired by 26.05.2010.

b) The alleged settlement/undertaking was dated 15.05.2010.

c) On 7.06.2010 E.A.No.1 of 2010 was filed by the J.Dr.

d) On 10.06.2010 the D.Hr sworn to an affidavit complaining that the order dated 31.03.2010 in A.S.M.P.No.413 of 2010 was not complied with.

e) On 6.12.2010 by accepting the averments made in support of A.S.M.P.No.2398 of 2010 the interim order dated 31.03.2010 was vacated while considering the prayer in E.A.No.1 of 2010. These aspects do have persuasive force in accepting the case of J.Dr.

The executing Court has considered the oral and documentary evidence in great detail. PW.5 the hand writing expert from FSL was examined. The report of PW.5 was marked as Ex.X.1 to X.4. Upon consideration of oral evidence of PW.5 and Exs.X.1 to X.4, the finding reads as follows:

“PW.5 who is Hand Writing Expert. During the pendency of EP at the instance of J.Dr the admitted signatures of D.Hr as well as the disputed signatures in Ex.A.1 were sent to Hand Writing Expert for comparison and opinion. Accordingly he gave his opinion. In the evidence PW.5 deposed he has been working as Scientific Officer in AP Forensic Science laboratory since 2002. He had undergone training in Lokanayak Jayaprakash Narayanan National Institute of Criminology and Forensic Sciences, Ministry of Home Affairs, Government of India, Rohini, New Delhi and also Government Examiner of Questioned documents. No doubt he is only a diploma holder but on that account it cannot be said that he is not competent to give opinion on questioned documents. His evidence shows that he received requisition from this Court in Dis.No.213 dated 7.03.2014 and it contained undertaking letter dated 15.05.2010 which is marked as Ex.X.3. The disputed signature is marked as ‘Q’ and standard signatures in 36 sheets are marked as S1 to S42 for the purpose of comparison and opinion. On examination of the disputed signatures in the original document and admitted signatures from all angles with the help of

sophisticated instruments like magnifiers, stereo microscope and video spectral comparator, he opined that the questioned signature 'Q' and standard signatures S1 to S42 differ with movement and line quality, skill, speed. Therefore he opined that the person who wrote the red enclosed signatures marked S1 to S42 did not write the red enclosed signatures marked 'Q' in his file No.DCV/54/2014 dated 28.03.2014 and the opinion is marked as Ex.X4. In the cross examination no doubt he had stated that he had not taken the help of photographs and charts in evaluating his opinion on the questioned documents. But at the same time he deposed that photographic method is oldest method and that he used sophisticated instrument in forming his opinion. He admitted that there are several variations in the signature marked as S40 to S42. He also admitted that they have returned the documents once to the court due to insufficient material, but again the court sent the same document and as per directions of court since no other documents are available he gave opinion, after comparing the signatures in the available material. He admitted that all the specimen signatures are having variations but within normal boundaries of signatures. But he denied that the specimen signatures sent to him are not contemporaneous signatures. He denied that the letter "B" in all specimens. He also denied that pattern of the questioned documents and specimens are similar. He admitted that in "B" lobe is similar to lobe in "A" letter in questioned as well as standards signatures. But he added that it is normal variations. He admitted that he had not identified "B" suffix of "full stop". He further admitted that the writing "full stop" in signature is one of the characteristics of the writings. He denied that letters 'A, M, A' are similar in question as well as S1, S2 and S12. He admitted that terminal part of letter 'y' is similar with that of some more standards 'S1 to S.42. But added that it is normal variations and the movement of the wrist is also normal. He denied that the letter 'R' in "Ramana" and Reddy" are similar to capital letter 'R' in questioned and standard signatures. According to PW.5 though there are some variations in the questioned documents and standard signatures those variations are normal. Ultimately it is the opinion of PW.5 that the signature marked as 'Q' and signatures marked S1 to S42 are not signed by the same person.

The J.Dr is banking on Ex.A1 which is said to have been given by D.Hr. It is for him to prove the same. But the evidence of expert shows that the

disputed signatures are not signed by the same person who signed standard signature i.e., admitted signatures. Hence I am unable to accept the contention of J.Dr that D.Hr executed Ex.A.1. It appears that Ex.A.1 signature is forged one.

The E.A. was dismissed. Hence the revision.

Sri G. Rama Sarma, learned counsel for the revision petitioner vehemently contends that the Executing Court for disbelieving the case of J.Dr has not recorded independent findings and that the consideration of material by the Court below is one sided. To point out non-consideration of relevant portions of oral evidence, the learned counsel has drawn my attention to a few portions in the oral evidence of PW.2, PW.5 and RW.1. The D.Hr has not filed counter affidavit but a counter by the counsel<sup>0</sup> representing the D.Hr was filed. Though there is no prohibition for the counsel to file a counter, but, having regard to the nature of pleadings in the affidavit, non-filing of counter should have been taken note by the Executing Court.

Sri T.S. Anand, learned counsel for D.Hr contends that the affidavit filed in E.A.No.1 of 2010 does not satisfy the requirements to accept full satisfaction under Order 21 Rule 2(2) of C.P.C. The Ipse Dixit averments cannot be taken note of in view of the happenings from the expiry of period granted by this Court till 10.06.2010 on the date on which A.S.M.P.No.2398 of 2010 was filed by D.Hr. The learned counsel further contends that this Court while vacating the interim order has noted that the condition imposed by this Court has not been complied with. Had it been a case where some amount under the decree was either paid or accepted by the D.Hr nothing prevented the J.Dr from filing a reply to the affidavit dated 10.06.2010 and work out proper remedies in A.S.M.P.No.2398 of 2010. The reasons recorded by the Division Bench in A.S.M.P.No.2398 of 2010 are also required to be appreciated by this Court. It is further contended that the burden is on the J.Dr to prove that there is mediation and in the said mediation settlement was arrived at between parties to receive a sum of

Rs.7,00,000/- as full and final settlement of the amount due and payable under the decree dated 16.11.2009 in O.S.No.22 of 2006. In the case on hand, the finding of fact recorded by the Executing Court that the evidence of PW.5 disproves the stand taken by the J.Dr. Hence he prays for dismissal of the revision.

Now the point for consideration is whether the J.Dr has made out any case for attracting the jurisdiction of this Court under Section 115 of C.P.C., and accept the alleged full satisfaction dated 15.05.2010.

The evidence adduced by the parties and the findings recorded by the Executing Court are already referred to. I do propose to reiterate the reasons in the order impugned. It is suffice to consider the probabilities of the payment of Rs.7,00,000/- and whether the J.Dr has discharged the burden to prove that there is final settlement of the amount due and payable under decree dated 16.11.2009. Though this Court in exercise of its revisional jurisdiction under Section 115 of C.P.C, does not propose to re-appreciate the oral evidence but for the purpose of understanding whether the omissions pointed out by the learned counsel for the J.Dr are present or not, I have perused the oral evidence. In my considered view, with regard to the appreciation of oral evidence by the Executing Court no exception can be taken. The probabilities of the case are that the E.P. amount is Rs.15,68,000/-, to prevent D.Hr from proceeding with execution of decree dated 31.03.2010, J.Dr has obtained conditional subject to payment of half of the decretal amount. The time for compliance had expired by 26.05.2010. Nearly after 20 days the present E.A was filed to record satisfaction. It is matter of record that D.Hr filed A.S.M.P.No.2398 of 2010 to vacate the interim order dated 31.03.2010. Non-compliance of the condition is the reason for vacating the interim order dated 31.03.2010. Had it been the case where any payment is made, the J.Dr would have certainly filed appropriate pleadings in A.S.M.P.No.2398 of 2010 or at least would have brought to the notice

of this Court that E.A.No.1 of 2010 is pending. The J.Dr failed in all forms in proving his case. In my considered view no exception to the findings of fact recorded by the Executing Court can be taken.

Having regard to the totality of circumstances, I see no reason to interfere with the order impugned in the Civil Revision Petition. The order does not suffer from any illegality or irregularity and refusal to record full satisfaction of decree dated 16.11.2009, is justified.

Accordingly the Civil Revision Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

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**S.V. BHATT, J.**

24<sup>th</sup> July, 2015  
Js.