

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.3006 of 2015

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.13-07-2015 in I.A.No.325 of 2015 in O.S.No.87 of 2007 of the Senior Civil Judge, Sathupally.

2. The petitioner herein is plaintiff in the said suit.

3. The said suit was filed by petitioner against respondents for specific performance of an agreement of sale dt.15-02-2004 allegedly executed by respondents in favour of petitioner. In the plaint, it was also contended that on 19-03-2004, 14-05-2004 and 17-01-2005 certain payments had also been made by petitioner to respondents.

4. Written statement was filed by respondents admitting the execution of the said agreement of sale but disputing the payments made by petitioner to them. They also contended that certain interpolations were made in the agreement of sale dt.15-02-2004.

5. Thereafter the petitioner filed I.A.No.1011 of 2014 to

send the disputed signatures on receipts Exs.A-2 to A-4 allegedly issued for above payments by respondents to a handwriting expert in F.S.L., Hyderabad for expert opinion. The said application was allowed and the petitioner deposited the necessary amount and the documents were sent to the F.S.L., Hyderabad.

6. It appears that the Director, F.S.L., Hyderabad returned the documents to the Court without conducting any examination for want of more specimen signatures of respondent Nos.1 and 2 in addition to admitted genuine signatures, and writings of them contemporaneous with the period when the disputed signatures and writings were made. In view of this event, the Court below appears to have closed the evidence of petitioner on 13-03-2015 and posted the matter for arguments.

7. The petitioner then filed I.A.No.325 of 2015 to set aside the docket order dt.13-03-2015 and reopen the evidence of petitioner and send the documents to the F.S.L., Hyderabad for expert opinion pointing out that it was the respondents who had to give specimen signatures and writings and it was for the respondents to produce the documents of the relevant period, if available, but they did not do so with an intention to obstruct the procedure of obtaining opinion of the expert and to defeat

the petitioner's rights. It was contended that the Court below was therefore not right in closing the evidence of petitioner and posting the matter for arguments.

8. Counter affidavit was filed by respondents opposing this application and contending that the application itself is not maintainable. It was further contended that the burden lies on the petitioner to produce the relevant documents and respondents had already furnished their specimen signatures and writings and they were sent to the Director, F.S.L., Hyderabad. They also pleaded that there were no documents pertaining to the period of Ex.A-1.

9. By order dt.13-07-2015, the Court below dismissed I.A.No.325 of 2015. It held that after the Director, F.S.L., Hyderabad returned the documents without examination, the petitioner failed to take steps for getting the required material and that was why the Court was right in closing her evidence on 13-03-2015. It observed that the petitioner, without securing the material as sought by the Director, F.S.L., Hyderabad, is not entitled to seek a second opinion on the same material. It observed that petitioner cannot dictate terms for re-examination on the material forwarded without making any efforts and without procuring the material.

10. Challenging the same, this Revision is filed.

11. Heard Sri M.Rajamalla Reddy, learned counsel for petitioner and Sri I.Saibaba, learned counsel for respondents.

12. The facts narrated above clearly indicate that after the Director, F.S.L., Hyderabad sent back Exs.A-1 to A-4 without examining them requesting more specimen signatures of respondents and other admitted signatures of respondent Nos.1 and 2, the respondents admittedly did nothing and did not furnish fresh specimen signatures. Even assuming that other documents containing their signatures of the same period as Ex.A-1 were not available as contended by respondents, that factor would not be material because the execution of Ex.A-1 is not disputed by respondents at all. They were disputing only the signature on Exs.A-2 to A-4 and therefore they were required to produce documents contemporaneous to Exs.A-2 to A-4. It is not their case that they did not possess such documents.

13. In my considered opinion the Court below acted perversely in punishing the petitioner for the inaction of respondents and closing the evidence of petitioner and thus allowing the respondents to take advantage of their

own wrong in not furnishing material required by the Director, F.S.L., Hyderabad.

14. Therefore, the order dt.13-07-2015 in I.A.No.325 of 2015 in O.S.No.87 of 2007 of the Senior Civil Judge, Sathupally cannot be sustained. It is accordingly set aside and I.A.No.325 of 2015 is allowed.

15. Accordingly the Civil Revision Petition is allowed with costs of Rs.1,000/- (Rupees One Thousand only) to be paid by respondents to petitioner within a period of four weeks from the date of receipt of a copy of this order.

16. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 08-09-2015

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