

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.No.2063 OF 2015

ORDER

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This CRP is filed against the order dated 23.04.2015 passed in I.A.No.203 of 2015 in O.S.No.10 of 2008 on the file of the II Additional Sessions Judge, Kurnool at Adoni, whereby the Court below dismissed the application filed by the petitioner/plaintiff under Section 45 of Evidence Act read with 151 of C.P.C., to send the questioned document and admitted signatures to the Handwriting Expert for his opinion.

The case of the plaintiff is that he has filed the said suit for specific performance basing on an oral agreement and in support of his case he relied on a plan alleged to have been prepared by PW6 and handwriting of DW2. When PW6 denied the signature on Ex.A2, the petitioner filed the above application. But the Court below without considering the same, dismissed the same.

Learned counsel for the petitioner submits that when DW2 denied his signature on Ex.A2, petitioner has filed the present application. He also submits that DW2 signature is very much available in the Court record and the same has to be sent to the handwriting experts for comparison and that no prejudice will be caused to the respondents if the alleged document is sent to the handwriting experts and the same is necessary for adjudication of lis in the suit. In support of his contention, he relied on Supreme Court judgment reported in ***State of Maharashtra, complainant v. Sukhdeo Singh and another, Respondents with State of Maharashtra through CBI., Appellant v. Sukhdev Singh alias Sukha and others, Respondents***^[1].

Learned counsel for the respondents submits that the petitioner has filed the above application at belated stage when the case is reopened for arguments and there are no contemporaneous signatures to compare handwriting of DW2 and the trial Court has rightly

dismissed the same.

In this case, it is admitted fact that the disputed signature of DW2 pertains to the year 2008, whereas the sample or admitted signature of DW2 is of the year 2015. Therefore, the Court below has rightly held that contemporaneous signatures are not available in the Court. The Court below also observed that the petitioner has filed the petition at belated stage when the case is reopened for arguments. No doubt under Section 73 of Indian Evidence Act, 1872 the Court can also compare the signatures, but the Court below has exercised its discretion in not sending the documents to the handwriting experts due to lack of contemporaneous signatures. The Supreme Court in ***State of Maharashtra, complainant v. Sukhdeo Singh and another, Respondents with State of Maharashtra through CBI., Appellant v. Sukhdev Singh alias Sukha and others, Respondents***^[2] held that the Court can compare the signatures under Section 73 of the Act when the quality of evidence in respect of specimen/admitted writing is of high standard and when it is weak, it would be dangerous to stake any opinion basing on the mere comparison. The said decision is not applicable to the facts of the present case, since in the present case, no admitted signatures of the year 2008 are placed before this Court to compare with the disputed signatures pertaining to the year 2008.

Therefore, I do not see any error or irregularity or infirmity in the order passed by the Court below warranting interference of this Court exercising power under Section 227 of Constitution of India.

Accordingly, CRP is dismissed. No costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 07.07.2015

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[\[1\]](#) AIR 1992 Supreme Court 2100(1)

[\[2\]](#) AIR 1992 Supreme Court 2100(1)