

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CIVIL REVISION PETITION No.2024 OF 2015

Between:

Muddala Venkata Narasimha Rao

.. Petitioner

and

Muddala Venkta Satyanarayana

.. Respondent

DATE OF JUDGMENT PRONOUNCEMENT : 06th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. Whether copies of the judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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CIVIL REVISION PETITION No.2024 OF 2015

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 20.03.2015 passed by the learned Senior Civil Judge, Narsapuram, West Godavari District, in I.A.No.1193 of 2014 in O.S.No.11 of 2006. The petitioner is the defendant in the said suit. He filed the subject I.A. under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872'), to send the suit promissory note to a handwriting expert for opinion. By the order under revision, the trial Court dismissed the I.A.

O.S.No.11 of 2006 was filed for recovery of a sum of money on a demand promissory note. Earlier, the petitioner-defendant filed I.A.No.530 of 2010 therein under Section 45 of the Act of 1872 to send the suit promissory note to the Forensic Science Laboratory for ascertaining the age of the ink and the signature therein. The

said I.A. was dismissed by the trial Court whereupon the petitioner-defendant filed C.R.P.No.3229 of 2010 before this Court. The said C.R.P. was also dismissed on 17.03.2011. Aggrieved thereby, the petitioner-defendant approached the Supreme Court by way of Special Leave Petition (C) No.23011 of 2011. The same was also dismissed on 29.08.2011. After a lapse of three years thereafter, when the suit was coming up for arguments, the petitioner-defendant filed the subject I.A. again asking for the suit promissory note to be sent to the handwriting expert for his opinion as to whether there was any material alteration therein. According to the petitioner-defendant, the digits '2' and '0' were added to the figure Rs.5,000/- so as to make it Rs.2,50,000/-. The respondent-plaintiff contested the I.A., alleging that the petitioner-defendant was only resorting to delaying tactics.

The trial Court found that the petitioner-defendant had not even raised the plea of material alteration of the suit promissory note in his written statement. In the absence of a plea in this regard, the trial Court was of the opinion that he could not be permitted to travel beyond the pleadings. The petitioner-defendant also failed to satisfactorily explain as to why he did not raise this issue in the earlier round of litigation when he sought examination of the suit promissory note for the purpose of ascertaining the age of the ink and the signature therein. Taking note of the fact that the suit related to the year 2006, the trial Court concluded that the petition was filed only to delay the matter and accordingly dismissed the I.A.

Sri Dasari SVVSV Prasad, learned counsel for the petitioner-defendant, contended that dismissal of the earlier application filed by his client under Section 45 of the Act of 1872 would not bar his filing a similar application thereafter. He placed reliance on case law to support his contention.

In **ZEENATHUNNISA V/s. MD.ABBAS**, a learned Judge of this Court held that the principle of *res judicata* would not apply to an application for appointment of an advocate-commissioner when the earlier application stood dismissed as a result of non-deposit of the commissioner's fees. The learned Judge was of the opinion that the earlier dismissal was not a decision on any question in the suit and therefore, the principle of *res judicata* would not apply.

In **MAHADEO MAHTO V/s. HIRALAL VERMA**, it was held that the principle of *res judicata* would apply at different stages of the suit but interlocutory orders would not operate as *res judicata*.

In **Y.JOGULAMMA @ JYOTHI V/s. CHUKKAKULA KONDAMMA**, this Court held that comparison of signatures or thumb impressions, in exercise of power under Section 73 of the Act of 1872, should be done by the Court only sparingly. The Court which comes to an opinion after such comparison should disclose its expertise and also give reasons for its conclusions.

In **SAJJADANASHIN SAYED MD.B.E.EDR. (D) BY L.RS. V/s. MUSA DADABHAI UMMER**, the Supreme Court dealt with the scope and import of the phrase 'directly and substantially in issue' in Section 11 CPC for applying the principle of *res judicata*. The Supreme Court was of the opinion that a collateral or incidental issue must be differentiated from a matter which is directly and substantially in issue. The Supreme Court however added the caveat that though, ordinarily, a decision on a matter which is collaterally or incidentally in issue is not *res judicata*, there would be exceptions.

In the considered opinion of this Court, the aforesaid case law is not at all relevant. The principle of *res judicata* would have no application to the facts obtaining. Earlier, the petitioner-defendant sought examination of the suit promissory note for a wholly different purpose, that is, to find out the age of the ink and signature therein. The purpose for which he now seeks examination by an expert is to ascertain as to whether there is any material alteration therein. As there was no decision on this aspect in the earlier round of litigation, the principle of *res judicata* would not apply.

The principle underlying the doctrine of constructive *res judicata*, embodied in Order 2 Rule 2 CPC, has application to suits and not interlocutory applications. However, the Court is bound to take note of the conduct of a party to a suit while dealing with an interlocutory application filed by such party. The petitioner-defendant, having initiated steps for examination of the suit promissory note for one purpose, viz., determination of the age of the ink and signature therein, pursued the matter right up to the Supreme Court. Having failed in that attempt, he now seeks to start afresh by again seeking examination of the suit promissory note for determining as to whether there is any material alteration therein. If liberty is given to a litigant to come up with different pleas as to the same document at different points of time during the suit proceedings at his own convenience, it would inevitably delay the disposal of the suit. Nothing prevented the petitioner-defendant from raising this plea

in his earlier application under Section 45 of the Act of 1872. It is therefore too late in the day for the petitioner-defendant to seek expert opinion on the suit promissory note as to the alleged material alteration.

That apart, as rightly pointed out by the trial Court, the silence of the petitioner-defendant in his written statement as regards this aspect speaks volumes. When he did not even raise this plea in his written statement, the petitioner-defendant has no basis to file an application at this late stage to ascertain whether there is any material alteration in the suit promissory note. Without a foundational pleading, the petitioner-defendant cannot be permitted to initiate a roving enquiry.

Thus, for reasons more than one, this Court finds that the civil revision petition is devoid of merit and it is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

06th OCTOBER, 2015

PGS