

THE HONOURABLE MR JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.5820 and 5821 of 2012

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COMMON ORDER

These two Revisions are filed under Article 227 of the Constitution of India by the defendant in O.S.Nos.344 and 382 of 2007 on the file of IV Additional Senior Civil Judge, Guntur.

2. The respective respondents are plaintiffs in those suits filed for recovery of money against the petitioner/defendant on the basis of promissory notes allegedly executed by the petitioner in their favour.

3. In the written statement, the petitioner contended that the signature on the suit promissory notes did not belong to him and that the said promissory notes were forged.

4. Issues were framed, trial was commenced, evidence on both sides was concluded and then, the matter was posed for arguments of both sides on 04.08.2012.

5. At that stage, the petitioner filed I.A.Nos.770 of 2012 in O.S.No.344 of 2007 and 771 of 2012 in O.S.No.382 of 2007 under Section 45 of Indian Evidence Act, 1872, praying that the suit promissory notes be sent to

handwriting expert for his opinion. No reason was assigned by the petitioner why such an application could not have been moved at an earlier point of time. After the trial commenced also, no admitted signatures of the petitioner for comparison with the disputed signatures were furnished.

6. Counter affidavit was filed by the respective respondents opposing this application denying that the suit promissory notes were forged and pointing out that the documents containing admitted signatures for comparison were not even filed by the petitioner. It is also pointed out that in the evidence led by the petitioner, there is no plea of forgery of the promissory notes.

7. By separate orders dated 18.09.2012, the Court below dismissed the said applications holding that the petitioner did not assign any reason for his failure to file this application at an earlier point of time and that he had filed the applications five months after completion of the trial, which indicates that he is not diligent in prosecuting the suit. It held that if necessary, he can seek examination of the signature on the suit documents by comparing with his admitted signatures under Section 73 of the Indian Evidence Act, 1872, by the Court.

8. Questioning the same, these Revisions are filed.

9. Learned counsel for the petitioner contended that

the orders passed by the Court below are unsustainable and that the Court below ought to have allowed I.A.Nos.770 and 771 of 2012 and sent the suit promissory notes to a handwriting expert for his opinion as to the genuineness of the signature on the suit promissory notes. He also placed reliance on the judgment of this Court in **P. SESHAGIRIRAO v. P. SOMASEKHAR RAO**^[1], wherein it was held as under;

“dismissal of order filed under Section 45 of Indian Evidence Act dismissed was upheld stating that though the application for sending the disputed documents for expert opinion cannot be dismissed on the sole ground of delay. If the Court feels that the expert’s opinion is needed for adjudicating on the dispute relating to the genuineness of the documents or their contents, it can send the document for expert’s opinion at any stage. However, Courts refrain from exercising such discretion if it forms an opinion that the parties are not diligent in filing the said application or that there are no bona fides behind filing of such application. That case was filed for declaration of their title and cancellation of judgment and evidence was commenced in the year 2008 and the documents under possession were confronted to the petitioner by the respondent and after closure of petitioner’s evidence respondent marked that document in chief and thereafter, the petitioner filed petition to have expert opinion and it was dismissed”.

Learned counsel also contended that the defence of forgery was taken in the written statement and although there is some delay in seeking for expert opinion, on the sole ground of delay, the application for referring the suit document to an expert, cannot be dismissed.

10. Learned counsel for the respondent, on the other hand, contended that the reasons given by the Court below for dismissal of said I.As are correct and no case has been made out for interference by this Court under Article 227 of the Constitution of India with the said orders.

11. There is no dispute that the suits were filed in the year 2007 by the respective respondents against the petitioner. After the trial commenced, both sides led evidence and the defence evidence was closed on 20.03.2012. The suits were then posted for arguments on 04.04.2012. Thereafter, D.W.1 was recalled by plaintiff and cross-examined and then, the suits were posted again on 04.08.2012 for arguments. At this stage, these applications have been filed. No reason has been assigned by the petitioner why these applications were not filed at an earlier point of time after the issues were framed, and why they were filed five months after conclusion of the trial. Also no documents containing his admitted signatures were filed by the petitioner, which can be utilized by an expert for comparison with the signatures on the suit promissory notes.

12. Therefore, I am of the opinion that the Court below was right in holding that the petitioner had not been diligent in prosecuting the suits and that the applications seeking expert opinion were filed belatedly and have been filed without bona fides. Even in the judgment cited

by the learned counsel for the petitioner, this Court held that the Courts should refrain from exercising discretion to refer the disputed documents to an expert , if it is of the opinion that the party, who seeks such a reference to an expert, is not diligent in filing the said application.

13. Therefore, I do not find any merit in the Civil Revision Petitions. They are, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these Civil Revision Petitions shall stand closed.

M.S.RAMACHANDRA RAO, J

10th June, 2015

sj

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