

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

CIVIL REVISION PETITION Nos.84, 91 and 96 of 2015

-
-
COMMON ORDER:

-
Since petitioner in these Revisions is the same person and common question of law arises for consideration in these Revisions, they are being disposed of by this common order.

2. The petitioner herein is defendant in O.S.Nos.83 of 2014, 1 of 2014 and 2 of 2014 on the file of the VII Additional District Judge, Gudur. These 3 suits have been filed by respective respondents for recovery of money against petitioner on the basis of promissory notes dt.16-09-2011 for Rs.23,00,000/-, dt.16-09-2011 for Rs.32,00,000/- and dt.15-09-2011 for Rs.22,50,000/-.

3. The petitioner herein filed written statements in all these 3 suits contending that he never borrowed the amounts mentioned and had not executed the suit promissory notes as alleged by respective respondents. He alleged that he was carrying on business in the purchase and sale of iron scrap for a period of 20 years in Sulerpet Town and in that connection, one Paderla Dasaratha Ramireddy of Sulerpet was helping him and

when he required money for the purpose of his business, the said person arranged a loan of Rs.5,70,000/- from a financier R.Padamchand Jain of Chennai on 20-08-2009; at that time, the lender R.Padamchand Jain obtained 4 blank printed promissory notes and also 4 blank cheques from him promising to return them after mortgage debt was discharged; that on 02-05-2012, he discharged the mortgage debt by paying Rs.6,00,000/, but the said Padamchand Jain did not return the blank promissory notes and cheques and stated that he had not brought them from Chennai and would send them through Paderla Dasaratha Ramireddy. According to the petitioner, the plaintiffs in the respective suits are relatives or friends of Paderla Dasaratha Ramireddy and the suit promissory notes were fabricated in the name of respective respondents. He alleged that the cheques were also postdated and the cheques were then got dishonoured. He alleged that he had had no acquaintance with the respective respondents and they had no financial capacity to lend such a huge amount to petitioner.

4. The petitioner filed I.A.Nos.369 of 2014, 362 of 2014 and 363 of 2014 in the 3 suits referred to supra under Order XXVI Rule 10-A r/w Section 75 CPC seeking orders

from the Court below to send the suit promissory notes to a Handwriting Expert at Hyderabad for the purpose of investigation and examination of the respective suit promissory notes.

5. In the affidavits filed in support of these applications, he stated that the signatures in the suit promissory note and writings in the body of the suit promissory notes were made at different times and not at the same time, so it was necessary to send the suit promissory notes to a Handwriting Expert to determine the time at which the signatures and the writings in the body of the suit promissory notes were made.

6. These applications were opposed by respective respondents, who contended that the petitioner had admitted his signature on the suit promissory notes and once he does so, it is deemed that consideration also passed and there was no necessity to send them for Expert opinion. They contended that the petitioner can as well request the Court to exercise its power under Section 73 of the Evidence Act, 1872. They further contended that during cross-examination, the petitioner had stated that he is not disputing his signature; that he had given blank promissory notes and cheques to one R.Padamchand Jain of Chennai; and therefore sending

the suit documents is an attempt to protract the suit proceedings.

7. By separate orders dt.18-12-2014, the Court below dismissed these applications. It referred to decisions in **Uttamchand Sarma Vs. Jasti Chinna Veerabhadra Rao**^[1], **Indira Balasubramaniam and others Vs. S.Subhash**^[2] and **Yash Pal Vs. Kartar Singh**^[3], which have held that age of the ink cannot be determined by the Expert with scientific accuracy. It therefore held that it is not possible to get Expert opinion regarding age of handwriting or a signature or body of writings on the respective suit promissory notes.

8. Challenging the same, these Revisions are filed.

9. The learned counsel for petitioners contended that the orders passed by the Court below are unsustainable and it ought to have sent the documents to the expert to determine the age of the handwriting and signatures on the promissory notes. He relied upon the decisions of this Court in **Uppu Jhansi Lakshmi Bai Vs. J.Venkateswara Rao**^[4] and **Penumastha Ramachandra Raju Vs. Gaddam Raja Sekhar Reddy**^[5].

10. The learned counsel for respondents, on the other

hand, supported the view of the trial court. He relied upon the judgment of Supreme Court in **Shashi Kumar Benerjee and others Vs. Subhodh Kumar Benerjee, since deceased and after him his legal representatives and others**^[6] and also the 3 decisions relied upon by the trial Court.

11. Therefore, the point for consideration is whether Court below is correct in refusing to send the suit promissory notes to a Handwriting Expert for determining the age of the handwriting on the respective suit promissory notes and the age of the signatures of the petitioner thereon?

12. In **Shashi Kumar Benerjee** (6 supra), the Supreme Court referred to treatise of Osborne on questioned documents with regard to the authenticity of expert opinion to determine the age of handwriting by applying chemical tests and observed that chemical tests to determine age, as a rule, are a mere excuse to make a guess and furnish no reliable data upon which a definite opinion can be based. This judgment was followed by this Court in **Uttamchand Sarma** (1 supra).

13. However, in **Uppu Jhansi Lakshmi Bai** (4 supra), a learned Single Judge of this Court after referring to the

judgment of the Supreme Court in **Shashi Kumar Benerjee** (6 supra), took a contra view and observed that the passage in the decision of the Supreme Court is not an authority for the proposition that the evidence of the handwriting expert should not be brought on record for the purpose of determining the age of the disputed writing.

14. With great respect to the learned Judge who decided the said case, the judgment of the Supreme Court is binding on this Court under Article 141 of the Constitution of India and a view contrary to that taken by the Supreme Court cannot be taken by this Court.

15. The judgment in **Uppu Jhansi Lakshmi Bai** (4 supra) followed by another learned Single Judge in **Penumastha Ramachandra Raju** (5 supra). For the same reason for which I am not inclined to follow **Uppu Jhansi Lakshmi Bai** (4 supra), I am of the opinion that even the judgment in **Penumastha Ramachandra Raju** (5 supra), in so far as it has taken a view contrary to the Supreme Court in **Shashi Kumar Benerjee** (6 supra), does not represent the correct legal position.

16. In **Yash Pal** (3 supra) , the Punjab and Haryana High Court held:

“in the present case, such investigation is not likely to help to conclusively prove that the writing dated

11-2-1998 was in fact recorded earlier because the age of the ink cannot be determined on the basis of the writing. If the ink is manufactured five years before the date of the execution of the document and used on 11-2-1998 for the first time then instead of resolving any controversy it would create confusion. Therefore, no useful purpose could be served by allowing such an application. It is true that opinion of expert is relevant under Sections 45 and 46 of the Indian Evidence Act, 1872 but in the present case that has to be read with Order 26. Rule 10A of the Code. The basic rationale is whether such scientific investigation is going to advance the cause of Justice and would be necessary for adjudicating upon the rights of the parties. Therefore, I do not find any ground to interfere in the well reasoned order passed by the learned Civil Judge”

17. This judgment has been followed by the Madras High Court in **S.Gopal Vs. D.Balachandran**^[7]. The Madras High Court has also taken a view that if an old ink is used by the person, who assisted the drawer who had already put his signature in the cheque, to fill up the matter, no useful purpose will be served if such a cheque is analysed by the expert for rendering an opinion.

18. In **Kambala Nageswara Rao Vs. Kesana Bala Krishna**^[8], this Court also considered the said issue and observed that in situations where signature on promissory

notes is not disputed but age thereon is required to be determined, complications would arise. It held that mere determination of the age, even if there exists any facility for that purpose, cannot, by itself, determine age of signature, particularly if the ink or the pen was manufactured several years ago before it was used, to put a signature. If there was a gap of 10 years between the date of manufacture of ink or pen, and the date on which the signature was put or document was written, the document cannot be said to have been executed or signed on the date of manufacture of ink or pen. Therefore, it held that forensic evidence of the age would be irrelevant.

19. Therefore, following the same, I am of the opinion that the Court below did not commit any error in refusing the applications filed by petitioners to send the suit promissory notes to a handwriting expert to determine the age of the handwriting in the body of the suit promissory notes and the age of the signatures on the said promissory notes.

20. Therefore, these Civil Revision Petitions are dismissed. No costs.

21. As a sequel, miscellaneous petitions pending if any,

in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 06-07-2015

Vsv/*

[\[1\]](#) AIR 2004 AP 225

[\[2\]](#) C.R.P.N.P.D.3082 of 2008 and M.P.No.1 of 2008 (Madras High Court)

[\[3\]](#) AIR 2003 P & H 344

[\[4\]](#) 1993(3) ALT 446

[\[5\]](#) 2005(6) ALT 49

[\[6\]](#) AIR 1964 SC 529

[\[7\]](#) 2008 Law Suit (Mad) 60

[\[8\]](#) 2014(1) ALD 521