

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

CIVIL REVISION PETITION No.5073 of 2012

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ORDER:

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This Civil Revision Petition is filed challenging the order
dt.10-09-2012 in I.A.No.893 of 2012 in O.S.No.274 of
2011 of the
Senior Civil Judge, Tadepalligudem.

2. The petitioners herein are defendant Nos.1 and 3 in
the suit.

3. The 1st respondent/plaintiff filed the suit for recovery
of money against petitioners and 2nd respondent on the
basis of a promissory note allegedly executed by
petitioners and 2nd respondent.

4. A written statement was filed by petitioners and 2nd
respondent denying the execution of promissory note and
contending that certain amounts had been borrowed in
the year 2008 by petitioners and
2nd respondent from 1st respondent and at that time, he
obtained empty promissory notes; even though the said
debt was discharged, the empty promissory notes were

not returned; and the suit promissory note appears to have been fabricated by filling up the contents and is not supported by any consideration.

5. The petitioners and 2nd respondent filed I.A.No.893 of 2012 before the Court below under Section 45 of the Evidence Act praying the Court to send the suit promissory note Ex.A-1 to an Expert to examine the patterns of writings with the admitted samples of suit promissory note and the hand writing habit of the scribe.

6. In the application they contended that the signatures of petitioners and 2nd respondent were obtained on empty white paper on which revenue stamps were already affixed, and during cross-examination of P.W.1, the 2nd petitioner had perused the suit promissory note and observed that line Nos.1 to 16 were uniformly written on it by maintaining natural distance but line Nos.17 to 20 appears to be adjusted and do not have the same free movement of the scribe. It was further pointed out that the signatures of petitioners and 2nd respondent were found in black ink while the body of the promissory note appears to have been written in blue ink. It was also contended that the gap between the words “induku saakshulu” and the signatures of attestors 1 and 2 is also not in natural

uniform way and they appear to have been adjusted to suit the convenience of

1st respondent and therefore it is necessary to refer it to an Expert.

7. Counter affidavit was filed by 1st respondent opposing this application. He contended that the allegations made by petitioners are not correct; the scribe of Ex.A-1, who was examined as P.W.3, had stated in his cross-examination that the last 3 lines were adjusted at the end of the promissory to facilitate the petitioners and 2nd respondent to sign on the promissory note; and that P.W.1 had also stated in his cross-examination that he did not remember whether the scribe had scribed the promissory note on the revenue stamp by adjusting the matter. He therefore contended that it was not necessary to send the suit promissory note to an Expert for his opinion.

8. By order dt.10-09-2012, the Court below dismissed the said application. It held that the allegations now made in the affidavit filed in support of I.A.No.893 of 2012 were not made in the written statement and when the suit is posted for further evidence of petitioners, this application has been filed. It also noted that the petitioners had not

contended that the suit promissory note did not contain their signatures and that of the 2nd respondent and in fact the 1st petitioner had admitted in his evidence as D.W.1 that the signature on the suit promissory note as executant belonged to him and his brothers.

9. Challenging the same, this Revision is filed.

10. The learned counsel for petitioners contended that the Court below erred in dismissing I.A.No.893 of 2012 and since the plea of petitioners is that empty promissory notes were subsequently filled up, it is necessary to determine the age of the handwriting and to refer the documents to an Expert also to note down the issues pointed out in the affidavit filed in support of I.A.No.893 of 2012 by petitioners.

11. The learned counsel for 1st respondent however refuted the above contentions and contended that the order passed by the Court below is correct.

12. No doubt, the petitioners have raised a plea in the written statement that certain empty promissory notes obtained from them in the year 2008 were utilized by 1st respondent to fabricate the suit promissory note. But the fact remains that the petitioners and

2nd respondent have not denied their signatures on the suit promissory note.

13. In **Kambala Nageswara Rao Vs. Kesana Bala Krishna**^[1] and **Gummadi Venkata Padma Rani and another Vs. Yellabilli Eswara Rao**^[2] decided by this Court on 29-06-2015, this Court had taken a view that determination of age of ink of writing on disputed documents is not useful and it would be merely a guess work. The points raised by petitioners in the affidavit filed in support of I.A.No.893 of 2012 do not require an Expert to highlight and even the Court below can note down the said points and come to a conclusion whether the contentions raised by petitioners and 2nd respondent are correct or not after considering the evidence adduced by both sides.

14. In this view of the matter, I am of the opinion that there is no merit in the Revision and it is accordingly dismissed. No costs.

15. It is however made clear that the petitioners and 2nd respondent are entitled to urge the contentions raised in the affidavit filed in support of I.A.No.893 of 2012 during the course of hearing of the suit and if such contentions

are raised, the Court below shall deal with them in accordance with law.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 12-08-2015

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

[\[2\]](#) C.R.P.No.773 of 2015