

HON'BLE SRI JUSTICE A.V.SESHA SAI
CIVIL REVISION PETITION No.3943 of 2014

ORDER:

Plaintiff in O.S.No.15 of 2010 on the file of II Additional District Judge, Karimnagar at Jagtial is the petitioner in the present revision filed under Article 227 of the Constitution of India. In the present revision, challenge is to the order dated 25.09.2014, passed by the learned II Additional District Judge, Karimnagar at Jagtial, dismissing I.A.No.1012 of 2014 in O.S.No.15 of 2010 filed by the petitioner herein under Section 45 of the Indian Evidence Act (for short 'the Act').

Heard Sri N.Ashok Kumar, Learned Counsel for the petitioner, and Sri G.Madhusudhan Reddy, Learned Counsel for the respondents, and perused the material available on record.

The petitioner herein instituted the suit against the respondents herein for specific performance of contract of sale. Resisting the said suit, the respondents - defendants filed a written statement. In the said suit, the plaintiff – petitioner filed the present I.A.No.1012 of 2014, under Section 45 of the Act, requesting the Court below to send the original agreement of sale (Ex.A.13) to the Forensic Department, Hyderabad by obtaining specimen thumb impression and their handwriting along with the signatures of respondent Nos.1 to 9 – defendant Nos.1 to 9. A counter affidavit was filed opposing the said application. The learned II Additional District Judge, Karimnagar at Jagtial, by an order dated 25.09.2014, dismissed the said application filed by the petitioner herein. Assailing the said order passed by the Court below, the present revision has been filed under Article 227 of the Constitution of India.

It is contended by the learned counsel for the plaintiff - petitioner herein that the order under revision is erroneous, contrary to law and is opposed to the very spirit and object to the provisions of Section 45 of the Act. It is further submitted by the learned counsel that, had the contents, of the affidavit filed in support of the application, been considered in proper perspective, the order impugned would not have emanated. It is nextly contended that the reasons assigned by the Court below are neither sustainable nor tenable in the eye of law; the Court below lost sight of the fact that the first defendant is only a thumb impressionist but not a signatory; the delay alone cannot be considered as the sole criterion for dismissing the application; and, if the application filed by the petitioner herein is allowed, the report of the expert would undoubtedly assist the Court in arriving at a just and reasonable conclusion. In support of his submissions and contentions, learned counsel relies upon **Jonnalagadda Ravi Sankar v. Jakka Rama Krishna Rao**^[1]; **Chityalgundameede Ramalakshmma v. Ediga Rangamma**^[2]; and **Anapalli Bhaskar v. Gudi Venkateswarlu**^[3].

On the contrary, it is vehemently contended by the learned counsel for the defendants – respondents herein that the order passed by the Court below is in accordance with law, and is in conformity with the provisions of Section 45 of the Act, and there is no illegality nor material infirmity in the order impugned; and, as such, the present revision is not maintainable under Article 227 of the Constitution of India. It is also contended that, since the application filed by the petitioner herein is belated one, the same cannot be considered. Learned counsel relies on **P.Seshagiri Rao**

v. P.Soma Sekhar Rao ^[4].

In the above background, the issues that boil down for consideration of this Court are:

1. Whether the order passed by the Court below is in accordance with law?
2. Whether the order under revision requires any correction by this Court under Article 227 of the Constitution of India?

In the instant case, the information available before this Court reveals that the petitioner herein instituted the suit for specific performance of contract of sale dated 05.12.2006. In the written statement, the defendants have denied execution of the agreement of sale. A perusal of the order passed by the Court below clearly discloses that there are three grounds assigned by the Court below for dismissal of the application firstly, Ex.A.13 is dated 05.12.2006, and the expert may not be in a position to give any opinion in the year 2014; secondly, the suit is at the advanced stage; and thirdly the Court has got ample power under Section 73 of the Act to compare the signatures.

In **Jonnalagadda Ravi Sankar** (1 supra), this Court held that an expert is known for his capability to arrive at the conclusion even by taking note of the undisputed writing irrespective of the time gap between the date of the sample and the date on which the disputed document was signed.

In **Chityalgundameede Ramalakshmma** (2 supra), this Court held that, as the document contained thumb impressions and not the signature, it is not possible for the Court to undertake comparison by itself and, the Court also held that, even though the application was filed after closure of the evidence on the respondent's side, the application should not have been rejected as belated. In this connection, it would appropriate to refer the

judgment of the Supreme Court in **State (Delhi Administration) v.**

Pali Ram^[5], wherein it was held that it is not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.

In **P.Seshagiri Rao** (4 supra) also, this Court held that an application for sending the disputed document for expert's opinion cannot be dismissed on the sole ground of delay.

In the instant case, it is significant to note that a chief affidavit of DW.1 was filed on 10.07.2014. The present I.A. was filed in August, 2014. In the facts and circumstances of the case, the Court below ought not to have dismissed the application on the ground of mere delay. In the opinion of this Court, if the application filed by the petitioner is allowed, and a report of the expert is called for, the same would undoubtedly render assistance to the Court below for arriving at a just and reasonable conclusion.

For the aforesaid reasons, the Civil Revision Petition is allowed setting aside the order dated 25.09.2014 passed in I.A.No.1012 of 2014 in O.S.No.15 of 2010 on the file of II Additional District Judge, Karimnagar at Jagtial and consequently the said I.A.No.1012 of 2014 stands allowed. Miscellaneous Petitions pending, if any, shall also stand disposed of.

A.V.SESHA SAI,J

Date: 03.03.2015

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[\[1\]](#) 2013 (1) ALD 213

[\[2\]](#) 2012(6) ALD 755

[\[3\]](#) 2013 (6) ALD 83

[\[4\]](#) 2012 (4)ALD 536

[\[5\]](#) AIR 1979 SC 14