

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION Nos.3853 and 3966 of 2015

COMMON ORDER:

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The petitioner in these two civil revision petitions is Sri Rajeswara Swamy Vari Temple, Saripalli Village, Ganapavaram Mandal, West Godavari District. It filed O.S.No.8 of 2013 before the learned Principal Junior Civil Judge, Tadepalligudem, for realizing a sum of Rs.37,705/- with interest and costs from the defendant, the respondent in these two civil revision petitions. After closure of the evidence of the petitioner/plaintiff, the respondent/defendant filed I.A.No.1015 of 2015 in the suit under Section 45 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'), to send the documents 2, 4 to 6 filed by the petitioner/plaintiff to the Government Handwriting Expert, A.P. Forensic Laboratory, Hyderabad, for comparison of the signatures in those documents with his admitted signatures. He also filed I.A.No.1014 of 2015 in the suit under Order 8 Rule 1 CPC to condone the delay on his part in filing certain registered documents bearing his signatures for the purpose of comparison with the signatures in the disputed documents. By separate orders dated 28.07.2015, the trial Court allowed both the I.As. Aggrieved thereby, the petitioner/plaintiff is before this Court by way of these civil revision petitions. C.R.P.No.3853 of 2015 arises out of the order passed in I.A.No.1015 of 2015 in O.S.No.8 of 2013 while C.R.P.No.3966 of 2015 arises out of the order passed in I.A.No.1014 of 2015 in the suit.

Heard Sri P.V.S.S.S. Rama Rao, learned counsel for the petitioner/plaintiff, and Sri Y. Chandra Sekhar, learned counsel for the respondent/defendant.

It is not in dispute that the respondent/defendant took the plea that the signatures in the disputed documents were not his in the written statement itself. The said written statement was filed a little over two months after the institution of the suit. P.W.1, speaking on behalf of the petitioner/plaintiff, appears to have asserted during his

cross-examination that the documents in question bear the signatures of the respondent/defendant. This gave cause for the filing of the subject I.As. for seeking expert opinion as to the signatures in these documents.

Sri P.V.S.S.S. Rama Rao, learned counsel, would contend on one hand that the applications were belated but, on the other, he would also contend that the respondent/defendant had to wait till the completion of his evidence before filing such applications.

It is the settled position of law that there is no timeframe fixed for filing of an application under Section 45 of the Act of 1872. Reference in this regard may be made to the observations of a Division Bench of this Court in **Janachaitanya Housing Ltd. v. Divya Financiers**^[1], which read as under:

“For the reasons aforementioned, we answer the reference thus: “No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case.”

That apart, in **Damara Venkata Murali Krishna Rao v. Gurujupalli Satvathamma**^[2], the Supreme Court affirmed that the occasion for making an application under Section 45 of the Act of 1872 would arise only after examination of the witnesses in relation to the document in question. That being so, this Court is of the opinion that the application filed by the respondent/defendant under Section 45 of the Act of 1872 was neither belated nor was it required to be filed only after the completion of the respondent/defendant's evidence. In that view of the matter, this Court finds no irregularity in the order passed by the trial Court in I.A.No.1015 of 2015 in O.S.No.8 of 2013.

Insofar as the order in I.A.No.1014 of 2015 in O.S.No.8 of 2013

is concerned, it appears that the trial Court lost sight of the fact that the said I.A. was filed only for condonation of delay in filing the application for receiving the documents and that a separate I.A. would have been filed by the respondent/defendant for actually receiving the registered documents bearing his admitted signatures. The order passed by the trial Court therefore reads to the effect that the documents sought to be filed by the respondent/defendant were also accepted. The trial Court should take steps to avoid such careless mistakes, which speak of the level of application of mind by it. However, as this is only a technical lapse and the order passed by the trial Court can be deemed to be one passed not only in the subject I.A. but also in the pending I.A. for receiving the said documents, this Court is not inclined to interfere. The admitted signatures of the respondent/defendant would be necessary for comparison with the disputed signatures in documents 2, 4 to 6 filed by the petitioner/plaintiff. Apart from the fact that the petitioner/plaintiff is not a party to the said documents, Sri P.V.S.S.S. Rama Rao, learned counsel, has no other objection for comparison of the signatures in the said documents. As the said documents are registered documents executed long prior to the institution of the suit and they bear the admitted signatures, this Court finds no reason to hold that the subject documents should not be accepted for comparison. Therefore, the order passed by the trial Court in I.A.No.1014 of 2015 filed in the suit also does not warrant interference.

Both the civil revision petitions are devoid of merit and are accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

28th October, 2015
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[\[1\]](#) 2008 (3) ALT 409 (D.B.)

[\[2\]](#) (2008) 12 SCC 170