

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5531 of 2012

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.06.08.2012 in I.A.No.1975 of 2012 in O.P.No.1087 of 2011 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad.

2. The respondent had filed the said OP under Section 9 of the Arbitration and Conciliation Act, 1996 before the III Additional Chief Judge, City Civil Court, Hyderabad alleging that a Memorandum of Understanding dt.04.12.2009, (for short, 'the MOU') was entered into by petitioners with respondent, and seeking certain interim relief therein.

3. Counter-affidavit was filed by petitioners opposing the grant of any relief in the said application to respondent contending that the said MOU is a forged, fabricated and tampered one. It was further alleged that receipt being Document No.6-2 of the list of documents filed by respondent was fabricated, and the signature of 1st petitioner therein at the end of the document was forged.

4. Thereafter, I.A.No.1975 of 2012 was filed by petitioners in the said O.P. under Section 45 of the Indian Evidence Act, 1872 to call for expert opinion on the

signatures said to have been made by petitioner in the margin against the addition unilaterally made by the respondent in para no.5 on page no.3 of the said MOU and at the bottom of page no.5 of the MOU (Ex.A.1), by replacing the complete page and also on the 1st petitioner's signature on the agreement under caption 'Terms and Conditions' at page no.6-2 of Ex.A.1.

5. In the affidavit filed in support of this application, it was contended that on the basis of false and fabricated documents, the respondent had sought an order of injunction restraining petitioners from alienating the OP schedule property and had even obtained an *ex parte* interim injunction behind their back. It was alleged that respondent is liable to be prosecuted for offences under Section 192 and 193 I.P.C. for misleading the court by filing fabricated and forged documents and also filing an affidavit declaring the said documents as genuine, knowing them to be forged and fabricated.

6. Counter-affidavit was filed to this application opposing the same. It was contended therein that the application is filed at a belated stage when the matter is posted for advancing arguments. It was also denied that there was any forgery or fabrication of the MOU or the receipt referred to above.

7. By order dt.06.08.2012, the Court below dismissed the said application. It held that petitioners

were silent about the tampering of the signatures in Ex.A.1 till the arguments were advanced by respondent; expert opinion would merely be an opinion and it is the option for the court to accept or reject it; they were silent for a long period and filed the present application only to delay the proceedings; they are at liberty to raise all their objections before the Arbitration Tribunal; that the court can also compare the admitted and disputed signature of petitioners to come to the correct conclusion; and that the petitioners have not established sufficient grounds to grant relief sought for by them.

8. Challenging the same, the present Revision is filed.

9. Heard Sri P. Harinath Gupta, counsel for petitioners; and Sri K.R. Koteswara Rao, counsel for respondent.

10. The counsel for petitioners contended that the order passed by the court below is unsustainable; that a Division Bench of this Court in **M/s.Janachaitanya Housing Ltd. v. M/s. Divya Financiers**^[1] had taken a view that no time limit could be fixed for applications under Section 45 of the Indian Evidence Act, 1872 for sending disputed signatures or writings to a handwriting expert for comparison and opinion, and that it should be left open to the discretion of the Court depending on the facts and

circumstances of the case; therefore, the Court below could not have held that the application is filed belatedly; the court below erred in observing in the impugned order that petitioners were silent about tampering of the signatures in the MOU and the other document; and that the court below had failed to note that in para no.37 of the counter-affidavit filed by petitioners in the O.P. this plea was specifically raised.

11. On the other hand, the counsel for respondent contended that the very filing of the application is only to drag on the proceedings in the OP; that the petitioners having suffered an order of interim injunction in the OP have even violated the same; that a rejoinder had been filed in the OP denying the allegation made by petitioners that there was a forgery or fabrication or tampering of the MOU or Ex.A.6; and that at the stage when the arguments of respondent have been concluded, the petitioners cannot be allowed to raise this plea.

12. I have noted the submissions of both sides.

13. In **M/s.Janachaitanya Housing Ltd.** (1 supra), a Division Bench of this Court held that the court cannot lay down any hard and fast rules controlling the discretion of the court to send disputed documents or writings for the opinion of an expert, or to examine him for such an opinion. The Bench quoted a judgment of the Supreme Court **Sangram Singh v. Election Tribunal, Kotah** ^[2],

where it held that procedure is something designed to facilitate justice and further its ends, and not a penal enactment for punishment and penalties and also not a thing designed to trip people up. It further held that if too technical a construction is put on the provisions, it would leave no room for elasticity of interpretation, and the very means designed for furtherance of justice, would be used to frustrate it. Therefore, in view of the decision of the Division Bench referred above, the finding of the Court below that the application filed is belated also cannot be accepted.

14. In the present case, there is a specific plea in the counter-affidavit filed by petitioners in the OP about forgery, fabrication and tampering of Exs.A.1 and A.6. So the court below is not correct in stating that petitioners were silent about it. It is expected to go through the pleadings of parties and take note of the contentions raised therein. In the facts and circumstances of the case, this being a very strong defence to the Section 9 application, it ought not to have been dismissed as belated.

15. It is also not correct in stating that expert opinion is only an opinion and it is for the court to accept or reject it. While this may be true, Courts have always been cautioned not to go into matters where they do not have expertise, and the expert opinion also would assist the

court in coming to a conclusion on the plea of the respective parties. That was why Section 45 of the Evidence Act, 1872 stands on the statute book and that is the will of the Legislature. The mere fact that the Court may accept or reject it cannot be a ground to deprive a party of an opportunity to lead evidence in support of his plea that the document produced by the other side is forged, fabricated or tampered.

16. Therefore, the order dt.06.08.2012 in I.A.No.1975 of 2012 in O.P.No.1087 of 2011 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad is set aside. The Civil Revision Petition is accordingly allowed. No order as to costs.

17. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.08.2015
Ndr/*

[\[1\]](#) AIR 2008 AP 163

[\[2\]](#) AIR 1955 SC 425