

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

CIVIL REVISION PETITION No.2592 of 2014

ORDER:

This Revision is filed challenging the order dt.19-06-2014 in I.A.No.83 of 2014 in O.S.No.30 of 2012 of the Senior Civil Judge, Gooty.

2. The petitioner herein is 3rd defendant in the suit. The respondent/plaintiff filed the said suit for recovery of money on the basis of promissory notes said to have been executed by the father of petitioner. Written statement was filed by petitioner denying the execution of the suit promissory notes by his father and contending that they are forged documents.
3. After the evidence on the side of respondent was closed, the petitioner and other defendants commenced their evidence and D.W.2 was cross-examined in part on 26-07-2013.
4. Thereafter the petitioner filed I.A.No.83 of 2014 under Section 45 of the Evidence Act, 1872 (for short "the Act") to send the suit promissory notes to a Government Handwriting Expert for comparison of the same with Exs.B-1 to B-3.
5. This application was opposed by respondent, and it was pointed out that several adjournments were sought by petitioner from 26-07-2013 onwards and belatedly this application is filed. The allegation that the suit promissory notes were forged was denied.
6. By order dt.19-06-2014, the Court below dismissed the said application stating that it is competent to itself compare the

disputed signatures under Section 73 of the Act and that there is no necessity to send the documents to an Expert. It also referred to the fact that the application was filed at the far end of the evidence of respondents.

7. Challenging the same, this Revision is filed.
8. Heard Sri B.S.Venkata Ramesh, learned counsel for petitioner and Sri G.Seena Kumar, learned counsel for 1st respondent.
9. A Division Bench of this Court in **Janachaitanya Housing Ltd. rep. by its Managing Director, Sri Madala Sudhakar Vs. Divya Financiers, A Proprietorship firm rep. by its Proprietrix, Ms. Gorantla Anjali** has held that no hard and fast rule can be laid down when an application for sending the disputed documents to an Expert can be filed under Section 45 of the Act. Therefore, mere fact that the application under Section 45 of the Act is filed during the course of evidence of the defendants, cannot be a ground to dismiss it.
10. Even though the Court can itself compare the signatures on the suit promissory notes with the admitted signatures of the executant on other documents, since the necessary expertise is not with the Court, Section 45 of the Act is enacted. It enables the Court to refer the disputed documents to an expert in handwriting for his opinion, so that the evidence of the expert will also guide the Court in coming to a correct decision.
11. The main defence in the suit is that suit promissory notes are forged. So I am of the opinion that denying an opportunity to petitioner to get handwriting Expert's opinion with regard to the suit promissory notes, causes great prejudice to petitioner.

12. Therefore, the impugned order is set aside and I.A.No.83 of 2014 is allowed. Consequently, this Revision is allowed. No costs.
13. It is, however, made clear that this exercise of obtaining the opinion of the Government handwriting Expert should be completed within a period of eight (08) weeks from the date of receipt of a copy of this order.
14. As a sequel, miscellaneous petitions pending if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 28-10-2015

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