

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CIVIL REVISION PETITION No.2088 OF 2015

Between:

Velchuri Venkata Srinivasa Rao

.. Petitioner

and

Vasa Bala Subrahmanyam and another

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 11th AUGUST,
2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2088 OF 2015

ORDER

The first defendant in O.S.No.212 of 2010 on the file of the learned Principal Junior Civil Judge, Palakol, West Godavari District, filed I.A.No.347 of 2015 therein under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872'), to send Ex.B4-relinquishment deed dated 08.09.2003 to a handwriting expert for verification of the signatures therein. By order dated 07.05.2015, the trial Court dismissed the said I.A. Aggrieved thereby, the first defendant in the suit is before this Court by way of this revision petition filed under Article 227 of the Constitution.

Heard Sri G.Eswaraiah, learned counsel for the petitioner-first defendant, and Sri Manda Venkateswara Rao, learned counsel for the first respondent-plaintiff.

Despite service of notice, the second respondent-second defendant did not choose to enter appearance before this Court.

The suit, O.S.No.212 of 2010, was filed for eviction of the petitioner-first defendant from the suit property and for delivery of possession. The defense of the petitioner-first defendant was that the first respondent-plaintiff and his brother had executed Ex.B4-relinquishment deed dated 08.09.2003 giving up their rights in the business. While so, during his cross-examination, the first respondent-plaintiff, speaking as P.W.1, denied his signatures in Ex.B4-relinquishment deed. It was on this ground that the petitioner-first defendant sought examination of the signatures in the said document by a handwriting expert. The first respondent-plaintiff contested the I.A.

altogether denying Ex.B4-relinquishment deed. He also contended that the IA was filed belatedly, after completion of the evidence on both sides.

The trial Court agreed with the first respondent-plaintiff that the subject IA was filed at a belated stage, as the trial had concluded. The trial Court was also of the opinion that no purpose would be served by sending the disputed document for examination by a handwriting expert as the issue in the suit was not with regard to the joint or individual nature of the business of the parties, but as to the nature of possession of the petitioner-first defendant over the suit property. As the I.A. had been filed after four years at the stage of arguments, the trial Court was of the opinion that the objective was only to drag on the proceedings and accordingly dismissed the same.

Sri G. Eswaraiah, learned counsel, placed reliance on ***JANACHAITANYA HOUSING LTD., HYDERABAD V/s. DIVYA FINANCIERS, GUNTUR***^[1] in support of his contention that the trial Court erred in dismissing the IA on the ground of delay. In the above decision, a Division Bench of this Court held that no time could be fixed for filing applications under Section 45 of the Act of 1872 for sending disputed signatures or writings to a handwriting expert and that the issue should be left open to the discretion of the Court, depending upon the facts and circumstances of each case and as demanded by exigencies. He also placed reliance on ***GURU GOVINDU V/s. DEVARAPU VENKATARAMANA***^[2], wherein a learned Judge of this Court opined that filing of an application under Section 45 of the Act of 1872 must necessarily be after the written statement is filed and there may be instances where such filing would arise only after the oral evidence of certain witnesses is over. The learned Judge further held that nothing prevents a party to the suit from filing such an application even at the stage of arguments to undertake comparison of signatures in a disputed document with admitted signatures, and in the event the Court feels that it needs the help of an expert to come to a proper conclusion, it could

always send the document even on its own accord by requiring the party concerned to meet the expenditure.

The written statement filed by the petitioner-first defendant reflects that his claim therein was that the plaintiff and one Vasa Kota Nagamalleshwara Rao executed the relinquishment deed dated 08.09.2003 not only giving up their right over the business run by them jointly in the plaint schedule property but also stating that in the event the second defendant in the suit proposed to transfer the said shop in the name of the first defendant as a lessee, the plaintiff would co-operate for the same and execute all necessary documents for the said transfer without claiming any remuneration.

The trial Court was therefore not correct in stating that Ex.B4-relinquishment deed only related to the giving up of business rights and did not pertain to the aspect of possession over the suit property. In the event the said document is proved to be genuine and valid, the right of the first respondent-plaintiff to seek eviction and delivery of possession would have to be examined in the context of his relinquishment of such right under Ex.B4-relinquishment deed. The document was therefore utmost relevant apropos the nature of possession of the petitioner-first defendant over the suit property. No doubt, the first respondent-plaintiff denied his signatures in Ex.B4-relinquishment deed in his cross-examination on 17.06.2013 and the subject IA under Section 45 of the Act of 1872 was filed only on 15.04.2015. However, it is not as if the petitioner-first defendant put-forth his claim under Ex.B4-relinquishment deed with delay. This issue had been raised by him in his written statement itself. Therefore, there was no delay worth the name in the filing of the IA. As pointed out by this Court in the decisions cited *supra*, no time limit can be fixed as a general rule for filing of applications under Section 45 of the Act of 1872 and it would have to be left to the discretion of the Court, depending upon the exigencies of the case. Trite to state, such an application could be filed even at the stage of arguments.

In the case on hand, the trial Court dismissed the subject I.A. on the ground of delay as it had been filed at the stage of arguments. Its opinion that no purpose would be served by sending Ex.B4-relinquishment deed to a handwriting expert was without basis in the light of the contents of the said document, as already pointed out hereinabove. The case on hand was therefore a fit one for exercising discretion in favour of the petitioner-first defendant and allowing examination of the signatures in the disputed document by an expert. The ultimate object of the Court would be to render justice between the parties and all possible measures in furtherance of such objective should be adopted by liberal exercise of discretion, whenever warranted. The case on hand presented one such instance but the trial Court adopted a hidebound approach, ignoring this principle.

The CRP is therefore allowed. The trial Court shall send Ex.B4-relinquishment deed dated 08.09.2003 to a handwriting expert for verification of the disputed signatures therein with the admitted signatures of the first respondent-plaintiff. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

11th AUGUST, 2015
PGS

[\[1\]](#) 2008 (4) ALD 339 (DB)

[\[2\]](#) AIR 2006 AP 371