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THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

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CIVIL REVISION PETITION NO.1155 OF 2016

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ORDER:

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This revision petition is arising out of the order dt.17.11.2012 passed in the court of the Junior Civil Judge, Srungavarapukota in I.A.No.62 of 2015 in O.S.No.161 of 2012, wherein the petition filed by the petitioner/defendant under Section 45 of Indian Evidence Act for sending Ex.A-3 and A-4 letters to an expert for comparison with the admitted signatures of the petitioner is dismissed, after hearing the arguments of both sides, on the ground that the petitioner has filed this petition after completion of his evidence and he has failed to explain on which documents he admits his signature and through which signature he intends to compare the signature on Exs.A3 and A-4.

In this revision petition, notice has been ordered to the respondent and the said notice was served on 21.03.2016, but the respondent has not appeared either by person or through his learned counsel.

Heard the arguments of the learned counsel for the

petitioner.

The learned counsel for the petitioner submits that the petitioner filed a petition under Section 45 of the Indian Evidence Act for sending the revival letters dt.09.07.2011 and 09.08.2008 i.e., Exs.A-3 and A-4 to an expert for comparison with the admitted signatures of the petitioner in Ex.A-1 promissory note. The learned counsel for the petitioner further submits that the petitioner has already taken a plea in the written statement denying the execution of Exs.A-3 and A-4 and therefore, he intends to prove that the signatures on Exs.A-3 and A-4 are forged and for that purpose, he wants to send the documents to an expert for comparison.

No doubt, the order of the trial court shows that the petition is filed after recording the evidence on behalf of the defendant is completed.

The learned counsel for the petitioner further submits that since the petitioner has already taken a plea in the written statement denying the execution of Ex.A-3 and Ex.A-4, he has to be given an opportunity to prove that the signatures on Ex.A-3 and Ex.A-4 are not his signatures and they are forged and in the interest of justice, she sought for considering the application for sending the signatures for comparison to an expert. The

learned counsel placed reliance on a decision of this court reported in **CHITYALGUNDAMEEDE RAMALAKSHMAMMA**

VS. EDIGA RANGAMMA (DIED) PER L.Rs.^[1]. The learned counsel submits that in paragraph 4 of the said judgment, the learned judge relying on a decision of this Court in **GURU**

GOVINDU VS. DEVARAPU VENKATARAMANA^[2] passed orders. In para-5 of the said judgment, it was held as follows:

“The trial Court dismissed the application of the petitioner on two grounds. The first is that it was filed at a belated stage and the second is that in view of existence of power in the trial Court under Section 73 of the Act, it may not be necessary to accede to the request to send the documents to an expert’s opinion. The first reason assigned by the trial Court does not appear to be sound. It is not as if the application under Section 45 of the Act must be filed soon after the written statement is presented. There may be instances where the necessity to file such application would arise after the oral evidence of certain witnesses is over. In case, the party concerned is able to elicit necessary information of admissions during the course of evidence, the necessity to file an application under Section 45 of the Act may not arise. Nothing prevents the party to a suit to file an application under Section 45 of the Act, even at the stage of arguments.”

The learned counsel for the petitioner submits that the trial court dismissed the application on two grounds. Firstly, the petitioner filed the said petition after completion of the evidence of witness and secondly, the petitioner has failed to explain on which documents he has admitted his signatures and which document has to be sent for comparison with the signatures on Ex.A-3 and Ex.A-4. The learned counsel submits that the petitioner has admitted his signature on Ex.A-1 promissory note, basing on which, the suit is filed and the same has to be sent for comparison with Ex.A-3 and Ex.A-4.

Considering the facts and circumstances of the case and placing reliance on the decision cited by the learned counsel for the petitioner in **CHITYALGUNDAMEEDE RAMALAKSHMAMMA VS. EDIGA RANGAMMA (DIED) PER L.Rs., (Supra-1)** it has to be seen that though an opportunity has been given to the respondent for his appearance, he has not appeared either in person or through an Advocate and as there are no valid grounds to reject the relief sought for by the petitioner for sending the document to an expert for comparison of the signatures, I am of the considered view that the learned Judge has not given an opportunity to the petitioner to send the documents to an expert.

Therefore, the order of the court below passed in I.A.No.62 of 2015 in O.S.No.161 of 2012, dt.17.11.2015 is set aside and the court below is directed to give an opportunity to the petitioner to send the documents Exs.A-3 and A-4 to an expert for comparison of the signatures in Ex.A-1 and dispose of the case.

In the result, the revision petition is allowed. No order as to costs.

G.SHYAM PRASAD, J

Dt.15.07.2016

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[\[1\]](#)) 2012 (6) ALT 539

[\[2\]](#) **(1) 2006 (5) ALT=2006 (4) ALD 333**