

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1550 of 2016

ORDER:

The unsuccessful petitioner/ defendant preferred this civil revision petition under Article 227 of the Constitution of India against the orders dated 15.02.2016 of the learned Additional Junior Civil Judge, Nidadavole, West Godavari District, passed in I.A.No.691 of 2015 in O.S.No.132 of 2015 filed by the petitioner/ defendant under Section 45 of the Indian Evidence Act, 1872 read with Section 151 of the Code of Civil Procedure, 1908 requesting to send the suit promissory note dated 08.09.2013 along with the admitted signatures of the defendant to a handwriting expert at Central Forensic Science Laboratories, Ramantapur, Hyderabad, for comparing the disputed signature/ s said to be of the defendant on the suit promissory note with his admitted signatures and furnishing a report along with an opinion as to the truthfulness or otherwise of the disputed signature/ s on the suit promissory note.

2. I have heard the submissions of the learned counsel for the revision petitioner/ defendant (hereinafter, 'defendant') and the learned counsel for the respondent/ plaintiff (hereinafter, 'plaintiff'). I have perused the material record.

3. In the suit on the foot of a promissory note dated 08.09.2013 filed by the plaintiff against the defendant, the defendant filed a written statement *inter alia* contending that he has no acquaintance with the plaintiff and that he never borrowed any amount from the plaintiff and that he never executed the suit promissory note and that the suit

promissory note is forged and fabricated. During the pendency of the suit, the defendant filed the afore-stated interlocutory application for the aforesaid relief reiterating his said defence. The plaintiff filed a counter resisting the said application of the defendant and asserting that the defendant borrowed the principal amount and executed the suit promissory note and that there is no need to send the suit promissory note to a handwriting expert as requested by the defendant.

4. On merits, the trial Court had dismissed the application of the defendant.

5. The learned counsel for the defendant while reiterating the case of the defendant would contend as follows:

The Court below ought to have accepted the request of the defendant and ought to have directed for sending the suit promissory note along with other documents containing the admitted signatures of the defendant to an expert for comparison of the disputed and admitted signatures and furnishing a report because the said report of the expert would have helped the trial Court in arriving at a just decision in the matter. After receipt of the suit summons, the defendant verified the suit promissory note and came to know that his signature on the suit promissory note is forged. Further, on enquiries, the defendant came to know that the plaintiff is a supporter and henchmen of Bandaru Venkata Ramarao who is the Ex-Sarpanch of the Katakoteswaram village. The said Ex-Sarpanch and one Akula Nageswararao jointly borrowed amounts from the defendant. When he pressurized them for recovery of the amount lent by him, the said persons sold their land to the defendant. From the sale consideration, the amount due to this defendant from the said

persons was deducted and the balance sale consideration was paid. Therefore, they bore grudge against the defendant and got fabricated the suit promissory note and got filed the suit through the plaintiff. The Court below ought to have seen that no demand notice was issued prior to the filing of the suit. While dismissing the application filed by the defendant, the trial Court expressed an opinion that the defendant failed to prove the alleged enmity between the defendant on one hand and the plaintiff and others on the other and that the signature on the suit promissory note is almost identical with the signatures of the defendant on the written statement, vakalat and suit summons. The said observations would amount to prejudging the issue involved in the suit at the stage of deciding interlocutory application. The trial Court ought not to have made such far reaching observations in the order impugned.

6. *Per contra*, the learned counsel for the plaintiff while supporting the orders of the Court below contended that the order impugned in this revision refusing to send the disputed suit promissory note along with other documents to an expert is a well considered discretionary order and that it is essentially within the judicial discretion of the Court to seek or not to seek an opinion of the expert and that in the facts and circumstances of the case, the trial Court rightly and judiciously exercised its discretion and that the defendant had only stated that his admitted signatures may be sent to an expert for comparison along with the signature/ s available on the suit promissory note, but did not state as to what are his admitted signatures and also did not produce before the trial Court any document of authentic nature like a sale deed, if any, executed by him prior to the disputes between the parties or some such

document and that the petition is purely intended to delay the disposal of the suit of the plaintiff and that under Section 73 of the Indian Evidence Act, the trial Court is competent to compare the disputed signatures with the other signatures of the defendant that are available on record and that it is not always necessary to seek an expert's opinion and that from the ratio in the decision of the Supreme Court in *Ajit Savant Majagavi v. State of Karnataka*¹, the comparison may be made either by a handwriting expert under Section 45 of the Indian Evidence Act or by the Court itself and that therefore, the contention that the Court has no power to compare the disputed signatures with the admitted signatures is not correct as the said power is available under Section 73 of the Indian Evidence Act and that the said observations in the order of the Court below are only *prima facie* observations and not findings finally made.

7. In reply, the learned counsel for the defendant while placing reliance on a Full Bench decision of *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash and others*², would contend that the defendant need not produce document of the same period relating to the alleged suit promissory note and that any document of a contemporaneous period, that is, of a period two or three years before or after the date of disputed writings would be of a satisfactory standard as per the Full Bench decision of this Court and that the trial Court did not properly and judiciously exercise its discretion.

8. I have bestowed my attention to the facts and submissions. In a suit of the year 2015 filed for recovery of money on the foot of a

¹ AIR 1997 SUPREME COURT 3255

² 2016 (2) ALD 1 (FB)

promissory note, it appears from the record that an application under Section 45 of the Indian Evidence Act is filed by the defendant even before the trial has commenced and concluded. The defendant, who contends that the signature/s on the suit promissory note is/are forged and the suit promissory note is fabricated in the circumstances stated by him, sought permission of the trial Court to send the suit promissory note containing the disputed signature/s to the handwriting expert along with his admitted signatures without even stating as to what are his admitted signatures and without even producing any authenticated document of a period prior to the disputes, like a sale deed or some such document which contained his signature/s suitable for comparison for obtaining a viable opinion of an expert. The plaintiff is not admitting the signatures of the defendant on his pleading and suit summons as standard signatures suitable for comparison. Even before this Court, the defendant did not produce any document of authentic nature containing his signatures, which can be taken as standard signatures suited for comparison with the disputed signatures on the suit promissory note. Though the trial Court was not correct in making observations, which will have far reaching consequences, while disposing of an interlocutory application, yet it appears that the trial Court is of the view that if necessary it can itself undertake the task of comparison of the disputed signatures with the other signatures of the defendant available on material documents on record in view of the provision of Section 73 of the Indian Evidence Act; and therefore, the Court below while exercising its discretion did not consider the request of the defendant. The order of the trial Court reflects that it is of the considered opinion that the case on hand is not a fit case to exercise the discretion and seek an opinion of the expert in

regard to the truthfulness or otherwise of the disputed signature/ s of the defendant on the suit promissory note after comparison of the same with his signatures on the material documents available on record by invoking the provisions of Section 45 of the Indian Evidence Act. Viewed thus, this Court is of the considered view that the order impugned does not brook interference.

9. In the result, the Civil Revision petition is dismissed confirming the orders of the trial Court, however, subject to the observation that the trial Court shall adjudicate the suit uninfluenced by its observations in the order impugned in this revision and in strict accordance with the procedure established by law and on fair and proper interpretation and evaluation of the evidence that may be brought on record. It is also made clear that at the conclusion of the trial, the defendant is at liberty to file a fresh application for the same relief, if he so wishes, and in such an event, the trial Court shall give an opportunity to the plaintiff to file counter and then dispose of the said application on its own merit having regard to the facts and circumstances of the case, the evidence available on record and the necessity, if any, for securing the opinion of an expert.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

24th October 2016
RAR

M. SEETHARAMA MURTI, J