

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.2361 of 2016

ORDER:

The revision petitioner is the plaintiff and unsuccessful petitioner in I.A.No.1011 of 2015 in O.S.No.243 of 2008 covered by the impugned order dated 18.03.2016 in the pending suit O.S.No.243 of 2008, passed by the learned XII Additional District Judge(F.T.C.), Vijayawada.

2. The plaintiff maintained the suit for recovery of money against the defendant. The defendant filed written statement and pleaded discharge. It is subsequent to that plaintiff sought for amendment of the pleadings in the plaint with version that Rs.1,65,000/- made by interpolating and altering '1' into '7' by adding '2' to make alleged discharge of Rs.27,65,000/- in believing as if there is no amount due as per the suit claim and that portion of the amendment of plaint allowed and additional written statement received if any and after settlement of issues, trial is commenced. The PW.1-plaintiff deposed in the suit by filing his chief examination affidavit on 04.04.2012 that was taken on oath subsequently with notice to defendant's counsel and later it was taken on oath in chief examination by the Court on 17.09.2012 and later the plaintiff was cross examined by the

defendant and in the course of cross examination on 18.02.2013 in the last para before re-examination in this regard there was a specific suggestion also of what was discharged is Rs.27,65,000/- and the alleged explanation by re-examination in this regard of Rs.1,65,000/- made as Rs.27,65,000/- and subsequently defendant as DW.1 filed his chief examination affidavit on 22.04.2013 and same was taken on oath on 30.10.2014 and three documents marked in the chief examination recorded by Court on that day. Ex.B3 is the diary of the year 2007 containing the disputed entry allegedly made of Rs.1,65,000/- into Rs.27,65,000/- by so called interpolation of '7' by correction of '1' and adding '2' before it. The cross examination of DW.1 was ultimately completed on 02.12.2015. There, DW.1 was specifically suggested as deposed by PW.1 in his chief examination and re-examination and as pleaded in the amendment to the plaint with the so called writing of Rs.1,65,000/- in figures alone put by him and not the other of making '1' into '7' and adding '2'. It is subsequently with no lapse of time the application in I.A.No.1011 of 2015 was filed on 17.12.2015 to send such entry of Ex.B3-book to handwriting expert with admitted writing lying in the suit record. In para-3 of the petition affidavit, it is mentioned what is written as Rs.1,65,000/- and the defendant manipulated the same into

Rs.27,65,000/- . Thereby the document is required to be referred to an expert for the purpose of submitting report. In fact, para-8 of the written statement of the defendant dated 04.03.2009 what was pleaded is he paid Rs.27,65,000/- to the plaintiff by 29.01.2007 and the same was acknowledged by the plaintiff as received by him. The said acknowledgment is made by the plaintiff in a diary of the defendant on 29.01.2007. What the defendant pleaded is relevant entry of Ex.B3-book of 2007 of said payment of Rs.27,65,000/- was the writing of the plaintiff. What the plaintiff by amendment to the suit pleaded in counter it is a manipulation by altering and tampering and additional written statement filed by the defendant is in denying the same. It is in the factual scenario and the events taken place as referred supra in the chief examination of the plaintiff way back on 17.09.2012 he exhibited 12 documents and those include the diary of the years 2002 to 2005-Exs.A1 to A4. In fact, it requires a comparison by the Court within its power under Section 73 of the Evidence Act with reference to Ex.B3-Book relevant entry of the writing with that of Ex.A4 in particular among Exs.A1 to A4 diary the entries of the years 2000 to 2005 that of the plaintiff with other writing pattern of the plaintiff available in Court record if any from his signatures or putting of dates right

from filing of the plaint till completion of evidence and by obtaining subsequent writing of the plaintiff in this regard. As the crux is whether such disputed writing of part of the figure '7' and the figure '2' among the numericals was the writing of the plaintiff or not. No doubt, it is the law fairly settled by the expressions of the Apex Court that once Court is not such an expert to that extent it may not take the ordeal but for within its power for such comparison take the assistance of an expert and solicit opinion as a step in aid for its power.

3. In view of the same, the Court should not have been dismissed the application even from the counter contest in opposing the same by the defendant but for kept pending while hearing the arguments also to consider while reserving for its forming any opinion of its possibility within its power under Section 73 of the Evidence Act without expert assistance or if at all such assistance is required to pass an order by reopening the matter to send the same to expert. Thereby, to that extent the matter requires by setting aside dismissal order and remanding the same to the lower Court to hear the arguments and consider the application after hearing the arguments before pronouncing any judgment and if it requires any assistance of expert for its comparison under Section 73 of the Evidence Act to send at the

expenses of the plaintiff as sought for in the application to the handwriting expert to determine and to submit opinion for the Court's power of comparison. If the Court feels not required to send to expert and it can compare within its power and dispose of the same while passing an order in the application along with the suit.

4. Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 18.03.2016 in I.A.No.1011 of 2015 in O.S.No.243 of 2008 on the file of the learned XIII Additional District Judge(F.T.C.), Vijayawada, by remanding the same to the lower Court to decide while hearing arguments or later as per above observations. No order as to costs.

5. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:19.09.2016
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