

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2975 OF 2016

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 28.03.2016 passed by the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, in I.A.No.22 of 2016 in O.S.No.735 of 2009. The petitioner is the first defendant in the said suit. I.A.No.22 of 2016 in O.S.No.735 of 2009 was filed by the first respondent/plaintiff under Section 45 r/w Section 67 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') to send Exs.A1, A3 and A4 to a handwriting expert for comparison of the handwriting and the signatures therein with similar writings of the petitioner/first defendant obtained in open Court. By the order under revision, the trial Court allowed the I.A. opining that, to meet the ends of justice, it would be reasonable to obtain similar writings as in Exs.A1, A3 and A4 in the open Court in the presence of both the Advocates and to send the same to the handwriting expert for comparison.

Notice was ordered to the first respondent/plaintiff and Smt. A.B.Jyotsna, learned counsel for the petitioner/first defendant, was permitted to effect personal service of notice by Registered Post with Acknowledgment Due. Learned counsel filed the returned envelope along with her Memo in proof of having taken out notice to the first respondent/plaintiff. Perusal of the returned envelope reflects that the endorsement 'unclaimed refused' was ticked by the postal authorities while returning the same to the sender. This would amount to deemed service of notice on the respondent/plaintiff. He, however, remains unrepresented.

By order dated 01.07.2016, this Court granted interim stay of further proceedings in the suit.

Sri R.Gopi Mohan, learned counsel representing Smt.A.B.Jyotsna, learned counsel for the petitioner/first defendant, contends that the trial Court erred in accepting the plea of the first respondent/plaintiff to send the disputed documents to a handwriting expert for the purpose of comparing the handwriting and signatures therein with the handwriting samples obtained in open Court. Learned counsel would point out that the petitioner/first defendant filed his written statement as long back as in September, 2011, denying genuineness of the said documents but, despite the same, the trial Court accepted the belated application filed in 2016 for comparison of the handwriting and signatures therein with the admitted handwriting of the petitioner/first defendant.

Perusal of the order under revision reflects that the trial Court was aware of the fact that the burden to prove his claim for recovery of money was upon the first respondent/plaintiff. Exs.A1, A3 and A4 were chits said to have been executed in June, 2007, by the petitioner/first defendant in relation to their money transactions. However, no explanation was put-forth by the first respondent/plaintiff as to why he did not seek such expert opinion despite the petitioner/first defendant having denied these documents as long back as in the year 2011.

That apart, the trial Court did not even examine the purpose served in securing the handwriting samples of the petitioner/first defendant in open Court for the purpose of comparison with the contents of these documents of 2007. If at all such comparison was justified and had to be undertaken, it should be with the admitted

handwriting sample which is contemporaneous or at least proximate to the date of execution of Exs.A1, A3 and A4, i.e., 2007. It would be simple enough for the petitioner/first defendant to deliberately change his handwriting if samples are to be secured in open Court now and seeking an expert opinion in this regard would only be an exercise in futility. Even otherwise, any finding of the expert would be liable to challenge on this short point. The trial Court seems to have completely overlooked this aspect of the matter.

On the above analysis, this Court finds that the trial Court erred in accepting the plea of the first respondent/plaintiff to send the disputed documents, Exs.A1, A3 and A4, for comparison of the handwriting and signatures therein with the samples of handwriting obtained in open Court from the petitioner/first defendant. This belated application did not warrant consideration at all and in any event, no purpose would be served by such comparison as already pointed out *supra*.

The civil revision petition is accordingly allowed setting aside the order dated 28.03.2016 passed by the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, in I.A.No.22 of 2016 in O.S.No.735 of 2009. Interim order dated 01.07.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

18th NOVEMBER, 2016

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