

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2150 OF 2016

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CIVIL REVISION PETITION (SR) No.11583 OF 2016

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COMMON ORDER:

These two revisions are filed under Article 227 of the Constitution of India, to set aside the order dated 15.02.2016 passed by the Additional Senior Civil Judge, Srikakulam, in I.A.Nos.13 and 14 of 2016 in O.S. No.346 of 2014, whereby the request of the petitioner to reopen the evidence of the petitioners for comparison of disputed signature with the admitted signatures by the Court by exercising the power under Section 73 of the Indian Evidence Act, 1872 (for short, 'the Act') were dismissed.

02. The suit was filed based on the promissory note dated 14.10.2011. The petitioner/ defendant in the suit raised a specific plea that there is a material alteration of promissory note and the figure 10 is altered as 14 which voids the document. The plaintiff and defendant adduced evidence and the suit was posted for arguments. At this stage, the petitioner felt that it is necessary to reopen the matter to compare the admitted hand writing of P.W.2 with the disputed hand writing. Therefore, sought to reopen the evidence and requested the presiding officer of the Court to exercise the power under Section 73 of the Act.

03. The respondents filed counter denying the material allegations, while contending that the petitioner/defendant raised a specific plea that the promissory note is a rank forged document, therefore question of comparison of disputed writing with the admitted writing does not arise and that there are no grounds to reopen the evidence of petitioner/ defendant and to compare the disputed writing with the admitted writing of P.W.2.

04. The trial court, after hearing both the counsel, dismissed

these two petitions on the ground that there are clear admissions in the evidence of P.W.1 regarding alteration, more particularly, P.W.2, in his evidence, clearly deposed about correction of date on the top of Ex.A.1 and the Presiding Officer also concluded that the figure 10 in the date was altered as 14 and finally concluded that there is no need to compare the disputed writing with the admitted writing of P.W.2.

05. Aggrieved by the orders passed in both interlocutory applications, the present two revisions are filed raising several contentions that the refusal of the court to exercise power under Section 73 of the Act is erroneous and that there is a specific plea regarding the material alteration in written statement. The trial court ought to have reopened the evidence, since, the power vested on the Courts to compare the disputed writing with the admitted writing as held by the Apex Court in **AJIT SAVANT MAJAGAVI V. STATE OF KARNATAKA**^[1] and prayed to set aside the impugned orders passed by the trial court in both the petitions.

06. Learned counsel for the petitioner, at the stage of admission, while reiterating the contentions urged in the affidavit, requested this court to set aside the order, directing the Presiding Officer of the trial court to exercise the power under Section 73 of the Act, to compare the disputed hand writing with the admitted hand writing of P.W.2 reopening the evidence of defendants.

07. The trial court clearly observed at paragraph 7 of the order that the figure 10 appears to have been altered as 14. The scribe of Ex.A.1- P.W.2 was cross-examined at length and in cross-examination he admitted that he corrected the date on the top of Ex.A.1 and the Presiding Officer of the Court also made an observation that the figure 10 is altered as 14 on Ex.A.1 in the date column and filed the suit on 09.07.2014. Therefore, there is no need to reopen the evidence to exercise the power under Section 73 of the Act.

08. Undisputedly, the Presiding Officer of the trial court expressed opinion about the material alteration which is pre mature

and the Officer is not supposed to express such opinion while deciding the interlocutory application when the main suit was posted for argument. However, the purpose of reopening the evidence of petitioner/ defendant is to compare disputed hand writing with the admitted hand writing of P.W.2. Such power under Section 73 of the Act can be exercised by the Court at anytime to decide the real controversy between the parties and such power has to be exercised sparingly. Therefore, even at the time of pronouncement of judgment in the suit, after hearing arguments of both the counsel, the court is empowered to compare the disputed hand writing with the admitted hand writing of P.W.2. Apart from that scribe of Ex.A.1-P.W.2 admitted about correction of figure 10 as 14 at the top of Ex.A.1 and that to the suit was filed much earlier prior to the corrected date i.e. expiry of limitation. However, it is for the Court to decide, whether such material alteration hit by Section 87 of the Negotiable Instrument Act, 1881 which voids the document or not, while pronouncing judgment and that to there is no need to compare the disputed hand writing of P.W.2 with the admitted hand writing of P.W.2 in view of specific admission in the cross-examination of P.W.2. At best, the Court is to record its finding whether such alteration took place before signing of the document, or subsequent to the completion of execution of document-Ex.A.1, by the petitioner/ defendant.

09. Therefore, I find no error in the finding recorded by the trial court. However, the opinion expressed by the trial court regarding the alteration is premature, giving liberty to the trial court to exercise the power under Section 73 of the Act at appropriate time before pronouncement Judgment.

10. Accordingly, these two revisions are dismissed. No costs.

11. Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 03.06.2016

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[\[1\]](#) (1997) 7 SCC 110