

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2121 of 2016

ORDER:

This is a civil revision petition under Article 227 of the Constitution of India by the respondent-plaintiff assailing the order dated 25.02.2016 of the learned Additional Senior Civil Judge, Kurnool, passed in IA.No.1174 of 2015 in OS.No.324 of 2010 filed by the petitioner-defendant under Section 45 of the Indian Evidence Act, 1872, requesting to send the vakalat and written statement containing his signatures along with the promissory note, exhibit A1, with endorsement thereon, exhibit A2, to a handwriting expert for comparison of the signatures of the defendant on vakalat and written statement on one hand with the signatures said to be of him on exhibits A1 and A2 and furnishing a report with opinion as to the genuineness or otherwise of the disputed signatures on exhibits A1 and A2.

2. I have heard the submissions of *Sri K. Rathanga Pani Reddy*, learned counsel appearing for the revision petitioner-plaintiff. Though the respondent-defendant is served with notice, none appears. I have perused the material record.

3. The facts as borne out by record and as per the submissions made before this Court, in brief, are as follows:

The plaintiff brought the suit against the defendant on the foot of a promissory note, exhibit A1, for recovery of money, *inter alia*, contending that the defendant made a part payment and acknowledged the suit debt under exhibit A2, endorsement. The defendant, who is resisting the suit, *inter alia*, contending that his signatures on exhibits A1 and A2 are forged filed the subject application with the afore-stated prayer. On merits and by the order impugned in this revision, the trial Court allowed the petition and directed the defendant to give his specimen signatures before the Court on 15.03.2016 to facilitate

sending of the vakalat, written statement, exhibit A1-promissory note, with exhibit A2-endorsement thereon, and the specimen signatures that may be taken in open Court to an expert for examination and furnishing a report with his opinion. Aggrieved thereof, the plaintiff filed this revision petition.

4. Learned counsel for the plaintiff would submit that the defendant in his written statement admitted that there is cordial relationship between the parties since ten years prior to the suit and that the defendant during his cross-examination denied his own signature on the vakalat filed in the suit and could not say for sure as to whether his signature on the affidavit filed in lieu of examination in chief is his signature or not and therefore when the defendant himself is unable to say as to whether his signatures on vakalat and the affidavit filed in lieu of examination in chief are his signatures or not, the said signatures on the said two documents cannot be considered as standard signatures for comparison. He would further submit that the plaintiff is not admitting the signatures of the defendant on the vakalat and the written statement as his genuine signatures and that the direction of the trial Court to the defendant to give specimen signatures in the open Court on the date fixed by it is also erroneous as the defendant, who is contending that the signatures on exhibits A1 and A2 are forged signatures, if called upon to give his specimen signatures, would for sure designedly disguise his signatures in order to succeed in his defence and that in view of that possibility that the defendant may designedly disguise his signatures, no useful purpose would be served even if specimen signatures are taken in open Court and that such signatures taken in open Court cannot be taken as signatures of comparable standard and hence, the trial Court ought not to have passed the order impugned in view of the admissions gained by the plaintiff in the cross examination of the defendant.

5. I have perused the order of the Court below. It is true, the aspect as to whether the signatures are of comparable standard or not is an aspect to

be decided by an expert. However, as per the settled legal position, it is essentially within the judicious discretion of the Court, depending upon the individual facts and circumstances of the case before it, to seek or not to seek an expert's opinion as to the genuineness or otherwise of disputed signatures after comparison of the same with the admitted and/ or standard signatures.

6. Be it also noted that the judgment of the Division Bench of this Court in Janachaitanya Housing Limited [2008 (3) ALT 409 (DB)] was rendered upon a reference made by a learned Single Judge of this Court on the question as to whether an application under Section 45 of the Indian Evidence Act, 1872, for expert opinion on disputed signatures could be entertained at a later stage of the suit, including when the suit was coming up for arguments after the entire trial. Upon due consideration of the case law on the point, the Division Bench while referring to the judicious discretion vested with the Court answered the reference as under:

For the reasons aforementioned, we answer the reference thus: No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case.

7. Before proceeding further it is trite to refer to the Full Bench decision of this Court in Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and others¹ wherein the legal position is settled. In this decision the reference was answered as under by the Full Bench.

"It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/ signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/ signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be

¹ AIR 2016 AP 118

desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/ signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in Janachaitanya Housing Limited v. Divya Financiers [2008 (3) ALT 409 (DB)], as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue."

As per the settled legal position, there is also no requirement of having documents with signatures of a contemporaneous period for the purposes of comparison by an expert and the Court is however not barred from sending the disputed signatures for comparison to an expert merely because the time gap between the admitted signatures and the disputed signatures is long and the Court must nonetheless endeavour to impress upon the petitioning party that comparison of disputed signatures with admitted signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. Be that as it may. As already noted, the judicious discretion must be exercised depending upon facts and circumstances of the individual case. Keeping in view the legal position, now it is to be examined as to whether the order passed by the Court below is sustainable in the facts and circumstances of the case on hand.

8. The defendant who is seeking comparison, by an expert, of his signatures on vakalat and written statement on one hand with the disputed signatures, which are on exhibits A1 and A2 on the other, has not produced into the Court below, along with his petition, any authentic documents like registered sale deeds or any other registered documents containing his signatures of a contemporaneous or any other period. The defendant has not even produced any other [unregistered] documents containing his signatures which are prior in point of time to exhibits A1 and A2. It is not his case that there are no such documents. It is settled law that the science of identifying thumb impressions is an exact science and does not admit any mistake or doubt. Nevertheless, the opinion of an expert in regard to genuineness or otherwise of signatures

and/ or hand writings is purely opinion evidence and such opinion evidence in regard to signatures and/ or handwriting will not be considered as an opinion based on exact science as in the case of thumb impressions. In addition, it is necessary to observe that expert's opinion evidence as to handwriting or signatures can rarely, if ever, take the place of substantive evidence. In the well considered view of this Court, the defendant's signatures on the Vakalat and the Written Statement cannot be considered as signatures of comparable and assured standard as according to the plaintiff even by the date of the filing of the vakalat the defendant is clear in his mind about his stand in regard to the denial of his signatures on the suit promissory note and the endorsement thereon and as the contention of the plaintiff that the defendant might have designedly disguised his signatures on the Vakalat and the Written Statement cannot be ruled out *prima facie*. The view point being projected by the plaintiff that if the defendant is called upon to furnish his signatures in open Court, he might designedly disguise his signatures while making his signatures on papers in open court is also having considerable force and merit. Unless the defendant makes available to the Court below any documents, with his signatures, of authentic and reliable nature more or less of a contemporaneous period, and unless such documents are in turn made available to the expert along with the suit promissory note, the expert will not be in a position to furnish an assured opinion, in the well considered view of this Court. Further, it is not in dispute that the defendant in his cross-examination has denied his signatures on his vakalat filed in the suit and also could not affirm or say for sure as to whether his signature on the affidavit filed in lieu of examination in chief is his signature or not. There is no point in sending to an expert the documents of doubtful nature and character and add one more piece of unreliable evidence and burden the record by wasting the time and money of the parties. When there are no signatures of comparable and assured standard on the material record before the trial Court, it is unsafe to obtain the

signatures of the defendant in open Court and send the said signatures and also his vakalat and written statement to an expert for obtaining his opinion after comparison of the signatures thereon with the disputed signatures on the suit promissory note, as any such opinion obtained from a handwriting expert on such material is not going to be of any help to the trial Court in effectively adjudicating the *lis* more particularly in the light of the admitted legal position that expert's opinion evidence as to handwriting or signatures can rarely, if ever, take the place of substantive evidence.

9. The Court below did not advert to any of the relevant aspects of the matter and failed to deal with the material contentions of the plaintiff and simply allowed the petition just on mere askance of the defendant. For the above stated reasons, this Court finds that the trial Court is not justified in passing the order impugned in this revision.

10. On the above analysis, this Court finds that the order impugned is unsustainable and is liable to be set aside.

11. In the result, the Civil Revision Petition is allowed and the order dated 25.02.2016 of the learned Additional Senior Civil Judge, Kurnool, passed in IA.No.1174 of 2015 in OS.No.324 of 2010 is set aside.

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

M. SEETHARAMA MURTI, J

07th December, 2016

Note: LR copy to be marked.

(B/o)

Vjl