

HON' BLE SRI JUSTICE G. SHYAM PRASAD

C.R.P. No. 5017 of 2016

DATE: 11.11.2016

Between:

Surendra Singh Bothra

.. Petitioner/  
Defendant

And

Narapati Ramu Naidu

.. Respondent/  
Plaintiff



ORDER:-

This Civil Revision Petition is directed against the order and decree dated 14.09.2016 in I.A.No. 155 of 2016 in O.S.No. 91 of 2014 passed by the Principal District Judge, Vizianagaram, whereby the petition filed by the petitioner under Section 45 of the Indian Evidence Act, was dismissed.

The brief facts of the case are that the respondent-plaintiff filed the suit against the petitioner-defendant on the basis of a created and fabricated promissory note dated 20.05.2013 because of some differences existed between them with regard to a Chit transaction. Therefore, the petitioner-defendant filed an application i.e. I.A.No. 155 of 2016 in O.S.No. 91 of 2014 under Section 45 of the Indian Evidence Act seeking to send the suit promissory note to an expert for determining the age of the ink of the writing of the alleged signatures on the revenue stamps as well as the ink of the body of the alleged suit promissory note including its date together with the age of the revenue stamps on the suit promissory note. However, the trial Court dismissed the application.

The learned counsel for the petitioner-defendant has submitted that it is necessary to send those documents to the expert for opinion as he is disputing the signatures on the promissory note.

Heard Sri P.Hari, Advocate, representing Sri N.Siva Reddy, learned counsel for the petitioner and perused the material placed on record.

Following are some decisions regarding various facilities to be considered for sending the documents to labs: In *Yash Pal Vs. Kartar Singh*<sup>1</sup>, the Punjab and Haryana High Court held as follows:

“5. .... However, in the present case, such investigation is not likely to help to conclusively prove that the writing dated 11.02.1998 was in fact recorded earlier because the age of the ink cannot be determined on the basis of the writing. If the ink is manufactured five years before the date of the execution of the document and used on 11.02.1998 for the first time then instead of resolving any controversy it would create confusion. Therefore, no useful purpose could be served by allowing such an application. It is true that opinion of expert is relevant under Sections [45](#) and [46](#) of the Indian Evidence Act, 1872 but in the present case that has to be read with Order 26 Rule 10A of the Code. The basic rationale is whether such scientific investigation is going to advance the cause of justice and would be necessary for adjudicating upon the rights of the parties. Therefore, I do not find any ground to interfere in the well reasoned order passed by the learned Civil Judge. The revision petition does not disclose any irregularity or illegality warranting interference of this Court in exercise of its jurisdiction under Section [115](#) of the Code.”

In *S. Gopal Vs. D. Balachandran*<sup>2</sup>, the Madras High Court observed as follows:

“15. It is found that the age of the ink cannot be determined by an expert with scientific accuracy. Further, the use of old ink manufactured long ago will definitely create a dent in the opinion

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<sup>1</sup> AIR 2003 (P&H) 344

<sup>2</sup> 2008 (CTC) (1) 491

furnished by an expert. Therefore, there is no necessity for sending the disputed cheque admittedly signed by the petitioner to an expert for his opinion. The order passed by the learned Judicial Magistrate I, Erode in C.M.P. No. 2915 of 2007 in C.C. No. 1287 of 2006 does not suffer from any illegality or impropriety. Therefore, there is no warrant for interference with the well considered order passed by the Trial Court.”

In *R. Jagadeesan Vs. N. Ayyaswamy and another*<sup>3</sup>, the Madras High Court held as under:

“8. In view of the above clear and unambiguous statement made by no less a person than the Head of the Department of Forensic Science, I am of the view that the whole exercise adopted in various Courts in this State to send the disputed documents for opinion to the Forensic Department in respect of the age of the writings and the documents is only futile. If any document is so sent, certainly the department will say that no opinion could be offered. As a matter of fact, the Assistant Director would inform the Court that already many such documents, which were sent to them by various Courts in the State for such opinion, have been returned by them with the report that no such opinion could be offered.

9. In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due to scientific advancements, new methods are invented to find out the age of the writings.”

On consideration of the material on record and in view of the decisions referred *supra*, it is clear that possibilities for determining the age of ink on the alleged suit promissory note are less, as such, the trial Court has rightly rejected the plea of the defendant. Therefore, the order of the trial Court does

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<sup>3</sup> 2010 (CTC) (1) 424

not suffer from any error apparent on the face of the record and it is perfectly justified and the same does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

In the result, the Civil Revision Petition is dismissed at the admission stage. However, the trial Court is directed to dispose of the suit, on merits, as expeditiously as possible. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

11.11.2016

bcj

G. SHYAM PRASAD, J

