

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.831 of 2015

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/defendant is directed against the orders dated 27.01.2015 of the learned Senior Civil Judge, Kadiri passed in I.A.no.319 of 2014 in O.S.No.70 of 2012 filed under Section 47 of the Indian Evidence Act read with Order 26 Rule 10A and Section 151 of the Code of Civil Procedure Code, 1908 requesting to refer the suit promissory note to a Government handwriting expert for the purpose of examination and comparison of the disputed signatures on the said promissory note with that of the admitted signatures.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The plaintiff brought the suit for recovery of money. The defendant, who is resisting the suit, filed the aforementioned application requesting to send the suit promissory note to a handwriting expert to furnish a report as to the genuineness or otherwise of the signatures appearing on the promissory note dated 04.08.2009 after comparison of the same with the admitted specimen signature of the defendant in the interests of justice. The plaintiff had resisted the said application. On merits, the trial Court had dismissed the petition of the defendant. Therefore, the aggrieved defendant is before this Court.

4. The case of the defendant in support of the said request, in brief, is as follows:

The plaintiff brought the suit for recovery of a principal sum of

Rs.95,000/- on the foot of a promissory note with interest and costs. The defendant by filing his written statement is contending that he had never borrowed any amount from the plaintiff and that he had never executed the suit promissory note in favour of the plaintiff and that the suit promissory note is a rank forgery. The defendant in his written statement had taken a specific defence as follows: 'The defendant had given his daughter in marriage to a person belonging to Bandlapalle. The plaintiff is a resident of Bayagaripalle, which is at a distance of one furlong from the above said village. While making visits to the village of his daughter, the defendant had developed friendship with the plaintiff who was working as a Teacher. Later, the plaintiff had retired from service. There were groundnut transactions between the plaintiff and the defendant for about 15 years. About seven years back, the plaintiff had indulged in an unfair trade practice and therefore, the defendant discontinued his transactions with the plaintiff. Therefore, the plaintiff bore grudge against the defendant. Further, the plaintiff has been lending amounts to poor people at exorbitant rates of interest. He was also enticing the poor people to go to gulf countries to earn monies arranging finance on interest basis at the rate of Rs.100/- per month per Rs.100/-. On such persons going abroad, the plaintiff has been laying his hands on their women folk. The plaintiff made efforts to send one of the relatives of the defendant to a foreign country. The defendant had foiled the said attempt of the plaintiff by giving proper advice to his relatives. For that reason also, the plaintiff bore grudge against the defendant. Political rivalry had erupted recently between one P.Obula Reddy and the defendant. The said Obula Reddy has given his daughter in marriage to a person, who is resident of Bayagaripalle. He was also making visits to the said village. He had developed acquaintance with the plaintiff. The defendant is an illiterate and he knows only to put his signature. The said Obula Reddy is well acquainted with the signature of this defendant as he had taught the defendant as to how to put his signature. The plaintiff and the said Obula Reddy colluded together and fabricated the suit promissory note by forging the signature of the defendant.' In the circumstances stated in the written statement, it is in the interest of justice to send the suit promissory note to a handwriting expert to furnish his opinion in

regard to the genuineness or otherwise of the signatures said to be of the defendant on the suit promissory note after comparing the same with the admitted/specimen signatures of the defendant on other documents. If the request is not granted, the defendant would be put to great hardship. The defendant is prepared to meet the necessary expenses for securing an opinion from the Government handwriting expert.

5. The plaintiff while reiterating his stand that the defendant had borrowed the amount under the suit promissory note and had duly executed the promissory note, had *inter alia* contended that the story set up in the defence of the defendant is false and invented and that there are no valid and sufficient grounds to consider the request of the defendant. He would further submit that the allegations that one Obula Reddy had taught the defendant as to how to put his signature; and that the said Obula Reddy, who is acquainted with the signature of the defendant, had colluded with the plaintiff; and that the suit promissory note is fabricated by the plaintiff and the said Obula Reddy are all false and that the petition is filed with *mala fide* intention to delay and procrastinate the matter and is, therefore, liable to be dismissed.

6. The trial Court had dismissed the application of the defendant having noted that the defendant did not submit any of his documents, which contained his signatures, which are usually put by him in the ordinary course of transactions; and that the defendant had failed to produce his standard signatures for the purpose of comparison by the expert; and that it is fairly conceded that the defendant is not in a position to make available to the Court the standard signatures for being furnished to the expert. The trial Court had also noted in its order that its experience shows that when disputed signatures are sent with one or two specimen signatures to the experts, they are returning the documents without furnishing an opinion by stating that unless standard signatures and one or two specimen signatures are made available for comparison, it is not possible to furnish an opinion.

The trial Court had also noted that for the purpose of comparison, contemporaneous signatures are necessary, in view of the decision of this

Court in **Sallepalli Narasimha Reddy v. Yerram Peddi Subba Reddy**^[1].

Accordingly, the trial Court had rejected the request of the defendant.

7. The learned counsel for the defendant would submit that since the defence of the defendant is that the signature on the suit promissory note is forged and that the promissory note was fabricated by the plaintiff in collusion with one Obula Reddy with whom the defendant had serious differences, there is no other option for the defendant but to make a request to the Court to send the promissory note to an expert for furnishing an opinion in regard to the genuineness or otherwise of the signature said to be of the defendant on the suit promissory note and that there is no other means by which the defendant can substantiate his defence and that therefore, in the facts and circumstances of the case, the defendant is constrained to file the instant petition having been left with no other option and that therefore, the trial Court ought to have allowed the petition of the defendant. He would further submit that if the trial Court had considered the request of the defendant and had secured an opinion from an expert as sought for by the defendant, there would have been one more piece of evidence by now before the trial Court for consideration at the appropriate time along with other evidence that may be available on record by the time of final adjudication and that by dismissing the petition, the trial Court had prevented the defendant from bringing on record another assured piece of evidence in the form of opinion of an expert and that therefore, the order impugned is liable to be set aside. He would also submit that if the request of the defendant is denied, it would result in failure of justice and that the defendant would suffer serious loss.

8. On the other hand, the learned counsel for the plaintiff while reiterating the case of the plaintiff, would submit that it is ridiculous to contend that one Obula Reddy who is unconcerned with the parties in the *lis* is acquainted with the signature of the defendant and that the said person had taught the defendant as to how to put his signature and that the said person had colluded with the plaintiff in fabricating the suit promissory note after forging the signature of the defendant on the suit promissory note and that the said

story on the face of it is a false and invented story and that whether or not the opinion of an expert should be secured is a matter which the trial Court has to decide and that the trial Court after exercising its discretion judiciously had negatived the request of the defendant holding that in the facts and circumstances of the case, it is neither necessary to secure an opinion from the expert nor was a case made out by the defendant to consider his request and that therefore, the order impugned, which is a well reasoned order made after exercising the discretion judiciously does not warrant any interference. He would further submit that the opinion of an expert, if any, furnished in regard to the genuineness or otherwise of the signature on the suit document would only be an opinion evidence and such opinion is not substantive piece of evidence like the opinion in regard to the genuineness or otherwise of a disputed thumb impression of an expert, which is based on exact science and that therefore, even if the expert furnishes an opinion, the same will not have any probative value and that it would be of no assistance to the Court and that therefore, the petition is liable to be dismissed and that the trial Court had rightly dismissed the petition of the defendant. He would finally submit that the defendant is not in a position to produce any documents with his signature either of a contemporaneous period or of any other period and that therefore, it is not safe to seek an expert's opinion only on the basis of signatures of the defendant on the vakalat and written statement and the specimen signatures that may be obtained in the open Court as there is a possibility to disguise the signatures with a design as the defendant has already made up his mind to deny the signature on the suit promissory note.

9. The learned counsel for the defendant had placed reliance on a decision of this Court in **Gulam Ghouse v. Madarse Jeelania Shama-Ul-Uloom Education Society**^[2] in support of his contention that in a case of this nature, the Court below ought to have allowed the petition instead of dismissing the same as there is no other course open to the defendant to prove his defence. In the cited decision, this Court on the basis of the principles laid down by the Supreme Court in **State (Delhi Administration) v. Pali Ram** [AIR 1979 SC 14] had held that there is no bar to send the

document to the expert for comparison and that the Court shall exercise its discretion judiciously in coming to a right conclusion on the question as to whether it is essential to send the documents for opinion of the experts.

10. Before proceeding further in the matter, it is necessary to note the following decisions:

1. Budumuru Vijayanandh v. Potnuru Bhagyalakshmi^[3];
2. Janchaitanya Housing Ltd., Hyderabad v. Divya Financiers, Guntur^[4];
3. K. Bajari Reddy v. S. Srenivasa Reddy^[5];
4. Jonnalagadda Ravi Sankar v. Jakka Rama Krishna Rao^[6]

In **Budumuru Vijayanandh** (3 supra) this Court while referring to the provision of Section 45 of the Evidence Act with the illustrations thereon had held as follows:

‘Discretion lies with the Court to form an opinion, *inter alia* as to identity of handwriting. In so doing, it is always permissible for the Court, again its discretion-to rely on the opinion of person specially skilled in questions as to identity of handwriting. Illustration (c) of Section 45 of the Act leads to an inference that when handwriting or signature on document in question and another document is produced, which is proved or admitted to have been written by the person whose signature is disputed, the opinion of experts on the question whether the two documents were written by the two persons is relevant. Therefore, for the purpose of comparison, the trial Court is bound to obtain the specimen signatures of the person who disputes his/her signature. Such obtaining of specimen signatures must be in the open court. If the same is not done, it is well settled that the same would not amount to compelling such person to give evidence adverse to him. If there are already documents on record, which are proved to have been written or signed by the person disputing signature or handwriting, it is always open to the Court to send the specimen signatures, disputed signatures or handwriting on documents, which are proved to have been written or signed by such person for comparison. But as the law stands, the Court has no power to compel a person who disputes handwriting to produce documents anterior to the litigation. However, it is always open to the opposite party to bring another document which is admitted to have been written by the person disputing the signature. In that view of the matter, I am not able to accept the submission of the learned counsel for the respondent that the petitioner herein may be compelled to produce the documents on which he admits his signature.’

In **Janchaitanya Housing Ltd.**, (4 supra) the question that was considered was – ‘whether the application under Section 45 of the Indian Evidence Act filed for sending signatures for comparison and expert opinion, can be entertained at a later stage, including a stage when the suit is coming up for arguments after entire trial?’ Having referred to the earlier decisions, this Court, while answering the reference had held that no time can be fixed for filing application under Section 45 of the Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and that the said matter 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 each case.

In **K. Bajari Reddy** (5 supra), this Court held in paragraph 10 of the cited judgment as follows:

‘Take for instance, the case where an individual knows to write or sign in English as well as Telugu. If, with a deliberate intention he puts his signature in one language, though in the usual course of business, he puts the signature in a different language, he cannot wriggle out himself from the obligation even by proof of the difference of signature. In such cases, the only way through which the signatory of a document can prove his contention is by taking steps under Section 45 of the Evidence Act. An expert of handwriting would be in a position to give his opinion on the genuinity or otherwise of the signature based upon the nature, pattern and slant of writing of the person concerned.’

In **Jonnalagadda Ravi Sankar** (6 supra), this Court held as follows:

The exercise to be undertaken under [Section 45](#) of the Act is somewhat typical. It is only an expert, who is conversant with the niceties of writing etc., that can express his view as to whether a particular writing or signature sent for comparison is that of the person, who is alleged to have subscribed to it. The existence of contemporaneous documents would certainly be helpful to an expert. Further, if the signatures on the depositions or the vakalat or pleadings are similar to those on the disputed document, they may also, be of help. However, it is too difficult to expect the existence of contemporaneous documents or similarity between signatures on the disputed documents and those on the pleadings and vakalat. Mere absence of such helpful circumstances cannot render the whole exercise under [Section 45](#) of the Act impossible or untenable. An expert is known for his capability to arrive at the conclusion even by taking note of the undisputed writing irrespective of the time gap between the date of the sample and the date on which the disputed document was signed. At any rate, the opinion expressed by an expert is not conclusive in nature and the parties to the litigation can certainly put forward their contentions in favour of or against such opinion. The grounds mentioned by the trial Court while rejecting the application cannot be sustained.

Placing reliance on the above decisions, the learned counsel for the

defendant would contend that the signatures on the vakalat, the written statement and the signatures of the defendant that may be taken in the open Court even if disguised designedly, an expert would be in a position to give his opinion on the genuineness or otherwise of the signatures based upon nature, pattern and slant of the writing of the person concerned and, therefore, the signatures on the vakalat, the written statement and the signatures that the defendant may be directed to give in open Court would be sufficient and would be of comparable standard and that it is for the expert to say whether such signatures are of comparable standard or not. It is further contended by the learned counsel for the defendant that the experts are known for their capabilities to arrive at conclusions regarding genuineness or otherwise of the signatures even by taking note of the undisputed writing irrespective of the time gap between the date of the sample and the date on which the disputed document was signed and that therefore, there is no necessity for the defendant to produce documents containing signatures of the defendant of a period contemporaneous to the period of the suit promissory note. It is true that in the decision in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu (died) per L.Rs and others**^[7], a Full Bench of this Court held as follows:

“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 handwritings/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 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 (D.B)], 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.”

11. I have given earnest consideration to the facts and the submissions. I have gone through the cited decisions. In a suit on the foot of a promissory note, the defendant while contending that his signature/s on the suit promissory note is/are forged and that the suit promissory note is fabricated by the plaintiff in collusion with one Obula Reddy, who is acquainted with the signature of the defendant, makes a request to send the suit promissory note to an expert for furnishing an opinion as to the genuineness or otherwise of the signature/s of the defendant on the suit promissory note after comparison of the signature therein with the signatures of the defendant available on other documents. Admittedly, the defendant is not in a position to make available to the Court any document of reliable nature containing his standard signatures, which he had put in the normal course while dealing with any other transactions. Except the vakalat and the written statement, there are no other documents containing the signatures of the defendant before the Court below. The defendant also offers to give his specimen signatures in open Court as and when directed by the Court for being sent to the expert for comparison along with his vakalat and written statement. Be it noted that there is no quarrel with the settled legal propositions. Ultimately, the decisions in the cited cases turned on the facts of the respective cases. It is the specific case of the defendant herein that he is not in a position to produce any document/s of a contemporaneous period or any other document of any period with his signatures, which can be considered to be of a reliable and comparable standard. To the extent possible it is always necessary to furnish to the expert the best available documents containing the signatures, which are of reliable and comparable standard to obtain an assured opinion; and, if only there is no such possibility to secure such documents, a resort can be had to sending the vakalat, the written statement, the depositions, if any, and also the signatures that may be taken in open

Court for comparison but not otherwise. When the law is settled that expert's evidence as to handwriting or signatures is opinion evidence and it can rarely, if ever, take the place of substantive evidence, there is no point in seeking such opinion evidence by making available signatures/writings that are not of reliable or assured standards as any such opinion evidence obtained on such data or material would further make the opinion evidence weak and undependable. The court below is of the considered view that in the facts and circumstances of the case, there is no need to consider the request of the defendant, more particularly for the reason that the defendant is not prepared to furnish any documents with his signatures of any period for being sent to the expert for comparison with the disputed signatures on the suit promissory note. Therefore, while dismissing the revision, it is appropriate to give the defendant one more opportunity to file a fresh application along with the documents with his signatures of any period of reliable character for consideration of his request afresh by the Court below.

12. In the result, the Civil Revision Petition is dismissed. However, liberty is given to the defendant to file a fresh application for the same purpose along with authentic documents like registered deeds containing his signatures of assured and comparable standards, in case he is in a position to make available such documents to the Court below for consideration of his request. On failure of the defendant to do so within a reasonable time, the trial Court shall expeditiously proceed with the further trial in the suit and dispose of the suit with the available evidence on record, as expeditiously as possible. No costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

22nd April, 2016
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- [\[1\]](#) 2014 (2) ALD 195
- [\[2\]](#) 2007(4) ALT 432
- [\[3\]](#) 2004(5) ALD 98
- [\[4\]](#) 2008(4) ALD 339 (DB)
- [\[5\]](#) 2011(4) ALD 799
- [\[6\]](#) 2013(1)ALD 213
- [\[7\]](#) 2016(2) ALT 248(F.B)