

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4347 of 2016

ORDER:

Aggrieved by the dismissal of I.A.No.194 of 2015 in O.S.No.125 of 2014 by order dated 18.08.2016 by the Court of VII Additional District Judge, Gudur, the petitioner, who is defendant in the suit, has invoked the revisional jurisdiction of this court under Article 227 of the constitution of India.

2. Plaintiff, who is the respondent herein, filed the suit viz., O.S.No.125 of 2014 for recovery of a sum of Rs.7 lakhs with interest alleged to be based on a promissory note dated 26.12.2009. In the written statement filed by the defendant/petitioner, a specific plea of alteration of the promissory note by the figure 'one' into 'seven' was taken. Defendant/petitioner filed the impugned I.A.No.194 of 2015 by invoking Section 45 of the Indian Evidence Act, 1872 (for short, "the Act") seeking to send the document for the opinion of the expert to establish the fact of alteration of the document. Respondent/plaintiff filed counter denying the allegations made in the petition and submitted that the petition is filed only to drag on the proceedings and that the court too also has power to compare the suit promissory note under Section 7 of the Act.

3. By the impugned order, the said application was dismissed holding that the application was made at a belated stage when the suit came up for defendant's side evidence.

4. Sri V.Siva Prasad Reddy, learned counsel for the petitioner, by placing reliance on the decision of the Supreme Court reported in ***Tatipamula Nagaraju v. Pattem Padmavathi***¹¹ would submit that there is absolutely no bar in filing an application to send the disputed document to the opinion of the expert even belatedly if the same is likely to aid the adjudication of the dispute in just and fair manner. Learned counsel further points out that the aspect of interpolation was pleaded by the petitioner in the written statement itself and in fact the burden to prove that the document is a valid one or not lies on the plaintiff and as a matter of fact the defendant in good faith was expecting that such application would be filed by the plaintiff himself which has not been done so. The defendant had made the application and the same may be allowed, particularly, considering the fact that the plea taken by the defendant/petitioner is that the words in the printed promissory note form was filled by the plaintiff by altering the figure '1' to '7'.

6. When the matter came up for admission on 09.09.2016, this court issued notice before admission and also permitted the petitioner to serve notice on the respondent, which was served on 19.09.2016 and proof of service also was filed. None appeared for the

¹¹ (2011) 4 SCC 726

respondent. No useful purpose would be served by keeping the matter pending awaiting the respondent's appearance before this court. Hence, the matter is being disposed of basing on the material available on record.

7. The court below had dismissed the IA on the ground of application having been made belatedly. In the process, the court below also had entered into discussion with respect to the merits of the matter, which was unnecessary for disposal of an application under Section 45 of the Act.

8. Learned counsel places reliance on the decision of this court reported in *Jalagadugula Eswara Rao and others v. Davala Surya Rao*². The Relevant paragraph reads as under:

"11. As far as the trial courts are concerned, the trial courts should allow the parties to adduce the oral and documentary evidence intended to be adduced by them, of course, which appears to be relevant for the purpose of the case. The doors of the trial court should not be closed at this stage, denying the opportunity to any party, to adduce any evidence. When a document is said to be forged and when a party has specifically denied the signature or the thumb impression on that particular document, such party should certainly have an opportunity to send the document to the Handwriting Expert for comparison of the disputed signatures or thumb impression with admitted signatures or the thumb impressions. Of course, the evidence of the expert is also not conclusive. The court has to examine the entire evidence on record, probabilities of the case, including the evidence of the Handwriting Expert, and on critical analysis, it should come to a conclusion. But at the stage of trial of a case, the trial court must give reasonable opportunity to the

² 2011(2) ALD 572

parties to adduce evidence. Of course, when the parties are not diligent or intending to protract the litigation, the Court may pass conditional order imposing suitable conditions.”

9. The ratio laid down above squarely applies to the facts of the present case. Similar is the case decided in ***Medikonda Rama Swarajyalakshmi vs. Posina Satyanarayana and another***³. The observations of the learned single Judge also may be observed as under:

“5. The learned Counsel for the petitioner contended that it is only after the plaintiff’s witnesses asserted that the signature on Ex.A-1 is that of the first defendant, the defendants now sought for sending the same to handwriting expert since according to the first defendant the signature found on Ex.A-1 is not her signature and it cannot be said that there is any belatedness on the part of the petitioner-first defendant. From going through the impugned order I find that the petition filed by the revision petitioner has been dismissed on the ground that the petitioner/1st defendant has filed the present petition at a belated stage and the same is intended only to protract the matter and enjoy the benefits from the land for some time. But, in my opinion, it cannot be dismissed on the ground of belatedness. Even though the opinion of the handwriting expert cannot be conclusive, it is important piece of evidence to hold whether the suit document is forged document or not. Though, no doubt, the Courts have also got power under Section 73 of the Evidence Act to compare the disputed signature in order to give a finding on the issue involved, but at the same time, the Courts normally take the assistance of the handwriting expert. In these circumstances, I think it appropriate to send the disputed document for the opinion of the Handwriting Expert. However, the learned counsel for the petitioner (sic.1st respondent) strenuously contended that the impugned order cannot be said to be a case decided for

³ 1999(1) ALT 222

exercising jurisdiction of this Court under Sec.115, C.P.C. He relied upon the judgments of the Supreme Court in *S.S.Khanna vs. F.J.Dillon*⁴, *Baldevdas vs. Filmistan Distributors*⁵ and *Gurdev Singh and others vs. Mehnga Ram and another*⁶ in support of his contention. From a reading of the judgment in *S.S.Khanna's* case, I find that the Supreme Court ruled that the case decided need not be the entire suit decided and it may be at interlocutory stage. But, what is to be seen is whether the rights of the person are affected by the impugned order. The principle laid down by the Supreme Court cannot be disputed. The explanation added to Sec.115 C.P.C. specifically incorporated the principle laid down by the Supreme Court in the above judgment. But, what is to be seen is whether the rights of the petitioner would be affected by the impugned order or not.”

10. In the facts and circumstances of the case, the ends of justice would be met, if the petition is allowed, however, putting the petitioner on terms of imposing costs.

11. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside on petitioner paying costs of Rs.15,000/- (Rupees fifteen thousand only) to the respondent/plaintiff. The trial court shall endeavour to complete the entire exercise within a period of three months.

As a sequel, the miscellaneous applications, if any, shall stand closed.

⁴ AIR 1964 SC 497

⁵ AIR 1970 SC 406

⁶ 1997(4) ALD (SC SN) 5

JUSTICE CHALLA KODANDA RAM

December 6, 2016

LMV

