

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.3531 of 2011

ORDER:

This revision, filed under Article 227 of the Constitution of India, challenges the order, dated 05-08-2011 passed by the Court of the Principal Senior Civil Judge, Tirupati, Chittoor District dismissing I.A.No.684 of 2011 in O.S.No.285 of 2009.

Heard Sri V. Eswaraiah Chowdary, learned counsel for the petitioner and Sri Cherukuri Mastan Naidu, learned counsel for the respondent, apart from perusing the material available before this Court.

Defendant is the petitioner in the present revision. The respondent herein instituted O.S.No.285 of 2009 for recovery of amount on the foot of a promissory note. In the said suit the defendant/petitioner herein filed the present I.A.No.684 of 2011 under the provisions of Section 45 of the Indian Evidence Act, praying the Court below to send the suit promissory note to the handwriting expert and fingerprints expert for opinion with regard to the alleged material alteration. The plaintiff/respondent herein resisted the said application by filing a counter-affidavit. The learned Principal Senior Civil Judge, by way of an order, dated 05-08-2011, dismissed the said application. The said order passed by the learned Prl. Senior Civil Judge is under challenge in the present revision.

It is contended by learned counsel for the petitioner/defendant that the order passed by the learned Prl. Senior Civil Judge is erroneous, contrary to law and opposed to the very spirit

and object of the provisions of Section 45 of the Indian Evidence Act. It is further submitted that had the contents of the affidavit filed in support of the application been considered from proper perspective, the order impugned in the present revision would not have emanated. It is also submitted by learned counsel for the petitioner that the petitioner herein clearly stated about the alteration in the written statement and also in the reply issued to the errata. In support of his submissions learned counsel placed reliance on the following judgments:

1. *2009 Law Suit (Mad) 1412. (paragraph Nos.12 and 13)*
2. *AIR 1979 Supreme Court 14. (paragraph No.29)*

On the contrary, it is submitted by learned counsel for the plaintiff/respondent herein that there is no illegality nor there exists any material infirmity in the impugned order, as such, the present revision is not maintainable and the petitioner is not entitled for any relief under Article 227 of the Constitution of India. It is further submitted that in view of the reasons assigned by the learned Judge in the impugned order, the same is not amenable for any correction under Article 227 of the Constitution of India.

In the above back-ground now the issue that boils for consideration of this Court is:

Whether the questioned order passed by the learned Prl. Senior Civil Judge is sustainable and tenable or whether the same requires any correction under Article 227 of the Constitution of India?

The material on record discloses that resisting the suit instituted by the respondent herein the defendant/petitioner herein filed the written statement and paragraph No.8 of the said written

statement reads as under:

“8. This defendant further submits that the plaintiff again issued errata legal notice dt., 29-07-2008 after receiving his reply notice by demanding a sum of Rs.1,60,000/- instead of Rs.60,000/- alleged to have been borrowed the same by him. The plaintiff mentioned in the errata notice dated 29-07-2008 due to typographical mistake, instead of Rs.1,60,000/-, it was mentioned as Rs.60,000/- only. The plaintiff altered the original pronote with the help of scribe and inserted the figure ‘1’ before Rs.60,000/- as if he borrowed a sum of Rs.1,60,000/-. The material alteration is clearly visible in the suit pronote as the plaintiff inserted the figure ‘1’ in the top and middle of the suit pronote. Infact he has return the words sixty thousands only but the words rupees one lakh was written by the scribe as the other contents was blank on the suit pronote and filled by the plaintiff in collusion with the scribe and attestors. Hence the suit pronote is materially altered and the same is liable to be dismissed on this ground alone.”

A reading of the above paragraph makes it evident that the defendant/petitioner herein pleaded categorically that the plaintiff altered the original promissory note with the help of the scribe and inserted the figure “1” before “60” as if he borrowed a sum of Rs.1,60,000/- and that the material alteration is clearly visible in the suit promissory note as the plaintiff inserted the figure “1” in the top and middle of the suit promissory note. It is also significant to note that in the legal notice got issued by the plaintiff/respondent herein on 25-07-2008 through his counsel it was mentioned that on 07-06-2006 the defendant borrowed a sum of Rs.60,000/- (Rupees sixty thousand only).

The defendant/petitioner herein sent a reply to the said legal notice. Thereafter the plaintiff/respondent herein got issued

another legal notice on 29-07-2008, calling upon the defendant/petitioner herein to pay a sum of Rs.1,60,000/- while indicating therein that by oversight the figure Rs.1,60,000/- was typed as Rs.60,000/-. Responding to the same, the defendant/petitioner herein got issued a reply, alleging that the plaintiff/respondent herein made material alteration in the promissory note by inserting figure “1” before the figure “60”.

The learned Prl. Senior Civil Judge, in the impugned order, found that on perusal of Ex.A1 promissory note it seems that there was no material alternation either in the words or in figures in the promissory note. It is further observed by the learned Judge that PW2 – scribe of promissory note, examined on behalf of the plaintiff, did not speak anything about the material alternation in the promissory note. Learned Judge eventually found that he does not find any reason to send the suit promissory note to the handwriting expert. A copy of the deposition of PW2 is placed on record by the learned counsel for the petitioner wherein he deposed as follows:

“It is true the words written in the suit pronote sixty thousand in a bold letters in comparison with the other words in the suit pronote.”

In this context it may be appropriate to refer the judgments relied on by the learned counsel for the petitioner. In case of **State (Delhi Administration) vs Pali Ram**^[1], the Hon’ble Apex Court held at paragraph No.29 as follows:

“29. The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted

writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.”

In case of **V.P.Sankaran vs R.Uthirakumar**^[2], the Madras High Court held in paragraph Nos.12 and 13 as under:

“12. Following the principles and guidelines laid down in the decision of the Hon'ble Supreme Court mentioned supra, it is held that referring the suit pro-note to the wisdom of handwriting expert is inevitable for the reasons that the petitioner had to be afforded with ample opportunities to rebut the presumption under Section 118 of the negotiable Instruments Act. When the contents in the suit pro-note are specifically disputed, the Court need not decline to refer the matter to the handwriting expert. As for the Criminal case under Section 138 of the negotiable Instruments Act, it has become the responsibility of the accused to discharge the burden. In so far as the civil cases are concerned, the position of affording ample opportunities to the defendant, when necessary defence is specifically available in the written statement, has to be considered.

13. There is no legal embargo for getting opinion from the handwriting expert, which would effectively assist the Court in reaching a just decision. By no stretch of imagination, it could be stated that the opinion of the expert, is not relevant factor for adjudication of the dispute and in order to unearth the truth, the Court can very well refer the matter for comparison and necessary chemical examination.”

Since the petitioner herein categorically raised plea in the written statement at paragraph No.8 with regard to the material

alteration in the suit promissory note and since in the suit notice the plaintiff mentioned the figure as only “60” and in view of the above mentioned deposition of PW2 and having regard to the principles laid down in the above referred judgments, this Court is of the considered opinion that it is a fit case where the request of the defendant/ petitioner herein for sending the document to the handwriting expert is required to be considered.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order, dated 05-08-2011 passed in I.A.No.684 of 2011 and consequently I.A.No.684 of 2011 in O.S.No.285 of 2009 is allowed. Since the suit is of the year 2009 the Court below is directed to expedite the disposal of suit. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SESA SAI, J

February 10, 2016

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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[\[1\]](#) AIR 1979 Supreme Court 14
[\[2\]](#) 2009 Law Suit (Mad) 1412