

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5140 of 2015

ORDER:

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The unsuccessful petitioner/defendant filed this Civil Revision Petition under Article 227 of the Constitution of India assailing the orders dated 13.11.2015 of the learned Senior Civil Judge, Ramachandrapuram passed in IA.no.461 of 2015 in OS.no.307 of 2011 filed under Sections 45 and 73 of the Indian Evidence Act read with Section 151 of the Code of Civil Procedure, 1908 requesting to send the suit promissory note to an expert to furnish a report as to the genuineness or otherwise of the disputed signatures on the suit promissory note.

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 introductory facts, in brief, are as follows:

The plaintiff brought the suit against the sole defendant for recovery of a sum of Rs.1,53,900/- with interest and costs on the foot of a promissory note dated 24.08.2008 for Rs.1,00,000/-. The defendant having filed a written statement is resisting the suit *inter alia* contending that the defendant had never executed the suit promissory note in favour of the plaintiff at any point of time or on 24.08.2008 as alleged in the plaint and that he did not receive any consideration from the plaintiff much less the consideration under the alleged suit promissory note in the presence of attestors and that he had never scribed the suit promissory note and that the suit is filed on account of some property disputes as mentioned in the written statement. During the pendency of the suit and when the trial is in progress, the defendant had filed the subject interlocutory application requesting to send the disputed promissory note to handwriting expert to furnish the opinion as to the genuineness or otherwise of the disputed writings and signatures on the said

document. On merits, the trial Court had dismissed the said petition of the defendant. Therefore, the defendant is before this Court.

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

He had never received the consideration and executed the suit promissory note in favour of the plaintiff. He had never scribed the suit promissory note and signed the suit promissory note in the presence of the alleged attesters. The suit promissory note is forged and fabricated. It was brought into existence with an illegal motive at the instance of one M. Medaparti Ramulu of Machavaram. In order to prove his defence, the defendant intends to obtain an opinion from an expert in regard to his alleged signature and writing/s on the suit promissory note. The plaintiff in his cross-examination had stated that he has no objection to send the suit promissory note to an expert. This defendant strongly believes that the suit promissory note is not scribed by him and is also not signed by him. In view of his defence that the said Ramulu has created the suit promissory note, it is in the interests of justice to send the suit promissory note to an expert for the purpose desired.

5. The plaintiff in his counter having stated that the defence of the defendant that the suit promissory note is forged is utterly false had *inter alia* stated that the defendant has personally scribed the suit promissory note in his own handwriting and that he has no objection to refer the suit promissory note to an expert along with the handwriting of the defendant for obtaining the opinion of an expert.

6. The learned counsel for the defendant would submit that in the written statement filed by the defendant, he had taken a specific defence that neither he had signed the suit promissory note nor was the suit promissory note scribed by him and that the suit promissory note was forged and fabricated in the circumstances stated in the written statement and that in the cross examination, PW1 had stated that he has no objection to send the suit promissory note to an expert for comparison of the disputed signature and

writing/s thereon with any other signature and writing/s of the defendant and that even in the application filed by the defendant to send the suit promissory note to an expert, the plaintiff in his counter having stated his stand had further categorically stated that he has no objection to send the suit promissory note to an expert for furnishing his opinion and that inspite of the said facts and circumstances, the trial Court had erroneously dismissed the petition of the defendant and that in the facts and circumstances of the case if the Court calls for an opinion of an expert in regard to the genuineness or otherwise of the writings and signatures on the suit promissory note, there will be one more assured piece of evidence before the trial Court for consideration at the appropriate stage and that the same would be helpful in finally adjudicating the *lis* without leaving any aspect to doubt and that, therefore, the trial Court had committed a grave error in dismissing the petition of the defendant, even though the plaintiff had reported no objection.

7. On the other hand, the learned counsel for the plaintiff would submit that though the plaintiff had stated no objection, the trial Court, by the orders impugned, had dismissed the application of the defendant observing *inter alia* that the application of the defendant is filed at the fag end of the trial and is intended only to drag on the matter and that since the defendant himself has scribed the suit promissory note there is no necessity to send the document to an expert for comparison of writing/s and the signature thereon with any other writing/s and signature of the defendant and that in view of the sound discretion exercised by the trial Court, the reasoned impugned order does not warrant interference.

8. Be it noted that in the suit filed on the foot of a promissory note stating that the defendant had borrowed the amount and executed the suit promissory note, the specific case of the plaintiff is that the suit promissory note is scribed by the defendant; however, the defendant had taken a specific stand that he had neither scribed the suit promissory note nor signed the same. The plaintiff had stated before the trial Court that he has no objection to send the suit promissory note to an expert for furnishing his opinion in regard to the genuineness or otherwise of the suit promissory note after

comparison of the signature and writing/s thereon with the other admitted/standard signatures and writings of the defendant. As rightly contended, in the facts and circumstances, of the case where a motive is attributed to the plaintiff and it is urged in the defence that the suit promissory note is created with a malafide intention at the instance of one Ramulu, in the well considered view of this Court, it would be just and fair to consider the request of the defendant. As rightly contended by the defendant, if the document is sent to an expert and a report is obtained in accordance with the procedure established by law, there will be one more assured piece of evidence before the Court in the form of an opinion of an expert and that evidence may be helpful to the Court while adjudicating the *lis* and in giving a *quietus* to the dispute once and for all after considering that assured piece of evidence along with the other evidence that may be available on record at the conclusion of the trial. Therefore, this Court considers that the order of the Court below warrants interference.

9. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.461 of 2015 in OS.no.307 of 2011 stands allowed. The trial Court is directed to now send the suit promissory note to a Government expert of the State Forensic Science Laboratory or some such Government Institution for comparison of the signature/s and hand writing/s said to be of the defendant on the said document and furnishing an opinion in regard to genuineness or otherwise of the said signature/s and writing/s after comparing with the admitted/standard signatures of the defendant on the other documents, which the trial Court may furnish to the expert, in its discretion, after the parties producing any such required documents as directed by it. However, the trial Court shall resort to this exercise after first giving necessary directions to the defendant to deposit the fee of the expert and other necessary expenses into the Court as per the procedure. Considering the fact that the suit is of the year 2011, the trial Court shall try to complete the whole exercise and obtain an opinion from the expert as expeditiously as possible and dispose of the suit, on merits and in accordance with the procedure established by law, however, within three

months from the date of the receipt of the report from the said expert.

There shall be no order as to costs.

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

JUSTICE M. SEETHARAMA MURTI

18th April, 2016
Vjl