

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.426 of 2016

ORDER :

This revision is preferred questioning order dated 31.12.2015 in I.A.No.209 of 2013 in O.S.No.82 of 2012 on the file of Senior Civil Judge, Proddatur.

2. The revision petitioner herein is defendant in the above referred suit O.S.No.82 of 2012, which is filed for recovery of money on the strength of a promissory note, and in that suit he filed I.A.No.209 of 2013 seeking expert opinion of his disputed signatures in the suit promissory note dated 21.02.2010. The said application was resisted by the plaintiff on the ground that previously a similar application was filed under the same provisions and petitioner again filed I.A.No.209 of 2013 for the same relief and that there are no bonafides. The trial Court on a consideration of contentions and rival contentions of both parties, recorded a finding that application is filed under a wrong provision and Section 73 of the Indian Evidence Act deals with inherent power of the Court to compare signature, writing or seal with other admitted signatures of the proved documents and it is not a provision to send the document to any expert. When a submission is made that relief cannot be denied simply on the ground of putting wrong provision, that was also considered by the Court below and ultimately dismissed the application on the

ground that DW.1 has not produced any documents for the contemporary period for comparison and the Court can itself compare signatures by exercising the powers under Section 73 of the Act. For these reasons, the application was dismissed. Aggrieved by the same, present revision is preferred contending that the Court below dismissed the application on the ground of delay though the application is filed in the year 2012 immediately after filing written statement, but it was taken up for hearing only after the evidence of DW.1. It is further submitted that the Court below failed to see the principles laid down by the Hon'ble Supreme Court with regard to the comparison of signature on disputed documents by handwriting expert. It is further submitted that when revision petitioner disputed the documents, the learned Judge ought to have forwarded the document to handwriting expert enabling the Court come to a just conclusion with regard to the correctness of the signature on Ex.A.1 promissory note. The learned counsel for revision petitioner relied on a judgment of Hon'ble Supreme Court in **State (Delhi Administration) v. Pali Ram**^[1] and referred to para 25 and submitted that Sections 73 and 45 of the Indian Evidence Act have to be read together for the purpose of sending the document to an expert. It is also submitted that a Full Bench of this Court in C.R.P.Nos.1500, 1572, 4098 and 5008 of 2010 held that application to send the document to an expert

can be at any stage of the proceedings, therefore, the finding of the Court below that it is filed at belated stage is not at all tenable.

3. On the other hand, advocate for respondent-plaintiff submitted that the Court below rightly dismissed the application as there is no material to show that promissory note is fabricated.

4. Now the point that would arise for my consideration in this revision is:

Whether the order dated 31.12.2015 in I.A.no.209 of 2013 in O.S.No.82 of 2012 on the file of Senior Civil Judge, Proddatur, is legal, proper and correct?

5. As seen from the record and the impugned order, the evidence of plaintiff's side was over and after completing the evidence of DW.1, present application was pressed for disposal. As seen from the evidence of plaintiff, attestors and scribe, are examined as PWs.1 to 4 and they deposed that Ex.A.1 promissory note was executed by revision petitioner herein in their presence and in the entire chief-examination affidavit of revision petitioner, nowhere he stated that the signature on Ex.A.1 promissory note does not belong to him. His only version is that he never borrowed any amount and he never executed any promissory note. Normally when a forgery plea is taken, party would examine first his signature on the disputed document in the Court by taking permission

and then only one can say whether that particular document bears his signature or not. When this Court asked advocate for revision petitioner to furnish the date on which revision petitioner examined the promissory note in the Court and the date on which necessary permission was taken, he was not in a position to furnish any information. In fact, the case was adjourned to this day to enable the advocate to get necessary information. But, in spite of that he is not in a position to furnish any information. But he stated that written statement was prepared only after verifying the promissory note in the Court. If really such permission was taken and the promissory note was verified in the Court, the same should have been reflected in the chief affidavit of revision petitioner. In the entire chief affidavit, except saying that he never borrowed any amount and never executed any promissory note, he has not stated anything about the signature on Ex.A.1 promissory note, which was already marked and available in the record, particularly when scribe and attesor assertively stated that revision petitioner signed on Ex.A.1 promissory note in their presence. The decisions relied on by advocate for revision petitioner are not on these aspects and they are only with regard to filing of petition at any stage and that powers under Sections 45 and 73 of the Act are one and the same. When revision petitioner has not stated with regard to his signature on the disputed document in his

evidence, the expert opinion, which is only a corroborative piece of evidence, would no way help the Court in deciding the genuineness of Ex.A.1 document. For these reasons, I am of the view that the Court below rightly dismissed application though on different ground, but it came to a correct conclusion and that I do not find any ground to interfere with the order of the Court below.

6. Accordingly, this revision is dismissed. As seen from the record, this revision is filed after reserving the suit for judgment and this Court passed an interim order directing the Court below not to pronounce judgment. As the revision is dismissed, the trial Court is directed to pronounce the judgment.

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

6th June 2016.

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[\[1\]](#) AIR 1979 SC 14(1)