

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5236 of 2011

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 17.10.2011 of the learned Junior Civil Judge, Prathipadu passed in IA no. 450 of 2011 in OS no.105 of 2008 filed under Section 45 of the Indian Evidence Act requesting to send the suit promissory note to a Government handwriting expert for comparison of the disputed signatures on the said promissory note with her admitted signatures on other papers.

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 on the foot of a promissory note for recovery of Rs.75,000/- with interest and costs. The defendant is resisting the suit. In the written statement, the defendant had taken a defence that there are family disputes between the defendant and the father of the plaintiff and that, therefore, the defendant suspects that the father of the plaintiff might have got the suit filed by the plaintiff by bringing into existence the suit promissory note by forging the signature of the defendant and that the suit promissory note is a rank forgery and is not supported by consideration and that when the plaintiff got issued a notice prior to the suit, the defendant had sent a reply

requesting to supply a Photostat copy of the promissory note for her perusal and for giving a detailed reply, but, the plaintiff did not supply a copy of the promissory note and had filed the suit with false allegations.

3.1 In this backdrop, the defendant filed the aforementioned IA before the trial Court stating that she was advised to request the Court to send the suit promissory note to a handwriting expert for comparison of the disputed signatures on the said promissory note with her admitted signatures that may be taken in the open Court and furnishing an opinion. In her affidavit filed in support of the petition, she had further stated that she is prepared to abide by the terms that may be imposed by the Court while allowing the petition and that if the petition is allowed no loss or prejudice would be caused to the plaintiff and that conversely, the defendant would suffer serious and irreparable loss, if the document is not sent to an expert.

3.2 The plaintiff resisted the said application by filing a counter *inter alia* contending that the suit promissory note is a genuine document and that the same was executed by the defendant after receiving the consideration in the presence of the scribe and the attestors of the suit promissory note and that when the suit is coming for trial, the petition is filed to drag on the matter.

3.3 On merits, the trial Court had dismissed the petition of the defendant. Aggrieved of the said orders, the defendant is before this Court.

4. At the hearing, the learned counsel for the parties made submissions in line with the pleadings stated above.

5. Now the short question, in the background of the pleadings and the submissions, is: 'whether the defendant's

request for sending the suit promissory note to a Government handwriting expert for comparison of the disputed signature thereon with the admitted signatures of the defendant on any other documents/papers and also her signatures that may be taken in open Court for the desired purpose deserves to be considered or not?’

6. The promissory note contains only the signature said to be of the defendant, but, not her thumb impression. The material record does not disclose whether the defendant is a literate or only a person who knows writing her signature. It is also not clear from the material record as to whether the defendant is a house wife or is employed. The defendant did not submit to the Court below, along with her petition, any authentic documents like registered sale deeds or any such registered documents containing her signatures of a contemporaneous or any other period. Therefore, before the trial Court, there are no documents with the signatures of the defendant of authentic or assured nature much less of a contemporaneous period for being sent to an expert for comparison with her disputed signature on the suit promissory note. It is settled law that the science of identifying thumb impressions is an exact science and does not admit any mistake or doubt. Nevertheless, the opinion of an expert in regard to genuineness or otherwise of signatures and/or hand writings is purely opinion evidence and such opinion evidence in regard to signatures/handwriting is not based on exact science as in the case of thumb impressions. Besides, it is necessary to observe that expert's evidence as to handwriting or signatures is opinion evidence and it can rarely, if ever, take the place of substantive evidence. In the well considered view of this Court, the defendant's signatures on the Vakalat and the Written Statement cannot be considered as signatures of comparable and assured standard as even by the date of the exchange of notices,

the defendant had made clear her stand in regard to denial of her signature/s on the suit promissory note and as the contention of the plaintiff that the defendant might have designedly disguised her signatures on the Vakalat and the Written Statement cannot be ruled out *prima facie*. The view point being projected by the plaintiff that the defendant may designedly disguise her signatures while making signatures on papers in open court is also having considerable force. Therefore, when the defendant is unable produce any authentic documents like the registered deeds, if any, executed by her, no useful purpose would be served by granting her request in the subject application. Unless the defendant makes available to the Court below any documents, with her signatures, of authentic and reliable nature more or less of a contemporaneous period and that unless such documents are in turn made available to the expert along with the suit promissory note, the expert will not be in a position to furnish an assured opinion, in the well considered view of this Court. Therefore, this Court finds that there is no error in the order impugned warranting interference.

7. Before parting with the case, it is necessary to note that the learned counsel for the defendant had placed reliance upon the following decisions:

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

I n **Budumuru Vijayanandh** (1 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.**, (2nd cited) 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** (3rd cited) 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** (4th cited) 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 decisions 3rd and 4th cited, 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 in arriving 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.

8. I have gone through the decisions. There is no quarrel with the legal propositions. Ultimately the decisions in the cited cases turned on the facts of the respective cases. It is not the case of the defendant herein that she is not in a position to produce any document/s of a contemporaneous period or any other document with her 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 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 of 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. Therefore, while dismissing the revision, it is appropriate to give the defendant one more opportunity to file a fresh application with the necessary pleadings and available documents for consideration of the Court below.

9. 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 her signatures of assured and comparable standard in case she is in a position to make available such documents to the Court below for consideration of her request. No costs.

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

M. SEETHARAMA MURTI, J

30th March, 2016
Vjl

[\[1\]](#) 2004(5) ALD 98

[\[2\]](#) 2008(4) ALD 339 (DB)

[\[3\]](#) 2011(4) ALD 799

[\[4\]](#) 2013(1)ALD 213