

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

- **Civil Revision Petition no.3263 of 2015** -

ORDER:

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful defendant is directed against the orders dated 02.06.2015 of the learned Senior Civil Judge, Nalgonda passed in IA.No.715 of 2014 in OS.No.142 of 2012 filed under Section 45 of the Indian Evidence Act requesting to send exhibit A1-promissory note to an expert for comparison of the disputed handwriting on the said document and furnishing a report.

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, which are relevant for consideration, in brief, are as follows:

The plaintiff brought the suit against the defendant on the foot of a promissory note dated 27.01.2010. The defendant had filed a written statement *inter alia* contending that he did not borrow any amount under the transaction as contained in the suit document; however, he had *inter alia* admitted his signature as well as the writing on the promissory note to the extent of the word '*Budha*' (indicating Wednesday) the date thereon and 'Rs.2,00,000/-' in figures and in words written in Telugu but, had denied the rest of the other written contents of the said document. When the matter is at the stage of trial, the defendant had filed the instant application requesting to send the said suit promissory note to an

expert for comparison of the disputed handwriting on the said document [excluding the aforesaid content in the hand writing of the defendant on it, which is admitted]. The plaintiff resisted the said application *inter alia* contending that the defendant by admitting his signature had admitted the execution of the promissory note and that the petition is intended to delay and drag on the proceedings. The trial Court following the decision in **M. Narsi Reddy v. V. Raghu Ram Naidu [2015 (2) ALT 529]** and having held that the defendant was unable to produce the signatures of a contemporaneous period to that of the suit document had dismissed the application though the defendant had in fact admitted the signatures on the suit document, but, had in deed denied some of the written contents of the suit document and wanted the same to be examined by an expert.

4. The learned counsel for the defendant would contend that since there is no signature of the scribe on the suit document and as the defendant is disputing certain of the written contents of the exhibit A1 other than the contents, which are admitted, it is necessary to send exhibit A1 to an expert for comparison of the disputed handwriting on exhibit A1 and furnishing a report. Be that as it may.

5. At this stage of the matter, the defendant is not in a position to say with certainty as to who has written the said disputed contents of exhibit A1-promissory note, though at one stage it is sought to be canvassed that the plaintiff might have written the disputed contents on exhibit A1. There is no material on record for ascertaining at this stage, the name and details of the said scribe. Unless the name and details of the scribe who had scribed the above said disputed contents of exhibit A1 are known and his handwriting is also made available to the expert for comparison, it may not be possible for the expert to furnish an opinion with the required assurance. On the other hand, if during the course of the further trial it becomes possible to ascertain, from the evidence brought on record, the name and the details of the scribe, who had

written the disputed contents of exhibit A1, then it might be possible to secure his hand writing also, if he is available, and then send the exhibit A1, with his available hand writing along with the admitted hand writing of the defendant to an expert for comparison in juxtaposition of all the hand writings on exhibit A1 with the other hand writings and furnishing an opinion; such a course, in the well considered view of this Court, would make it practicable to furnish to an expert, the best possible material for comparison and for furnishing an assuring opinion. Therefore, in the well considered view of this Court, the petition with the present request filed by the defendant before the trial Court is premature and hence, it would be appropriate to consider such an application after further progress in the trial. Though the trial Court did not assign valid reasons for dismissing the application, on the analysis supra, this Court finds that the order impugned can be sustained.

6. In the result, the Civil Revision Petition is dismissed. However, the defendant is given liberty to file at an appropriate later stage, a fresh application, if he so chooses and desires, for sending the exhibit A1 document to an expert for comparison of the disputed handwriting on it, eventually, if it comes to light as to who is the scribe of the said contents on the said document and his writing is also obtainable and is secured for comparison. However, even after further trial, if it turns out that it is not possible to ascertain from the evidence brought on record the name and details of the scribe, yet the defendant may renew his request to send the exhibit A1 to an expert for comparison of the disputed writing on the said exhibit with his admitted writing which is on it and his other admitted writings on other contemporaneous records or documents, if any. It is needless to state that in case any such application comes to be filed by the defendant, the trial Court shall, after giving an opportunity of filing a counter to the plaintiff, dispose of the said application on merits and in strict accordance with the procedure established by law,

uninfluenced by the observations, if any, made in these orders.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

17.02.2016

Vjl