

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

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CIVIL REVISION PETITION No.239 OF 2016

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ORDER:

This Revision is filed, under Article 227 of the Constitution of India, by the defendant in O.S.No.136 of 2013 on the file of the Court of the Senior Civil Judge, Gooty, challenging the orders passed in I.A.No.447 of 2015 in O.S.No.136 of 2013, dated 25.11.2015.

2. Heard Sri N.Chandra Sekhar Reddy, learned counsel, appearing for the petitioner and Sri N.Ranga Reddy, learned counsel, appearing for the respondent, apart from perusing the material available before the Court.

3. The respondent herein instituted the suit for recovery of money on the foot of a promissory note. Resisting the said suit, defendant/petitioner herein filed a written statement. In the said suit, the petitioner herein filed the present I.A.No.447 of 2015 under the provisions of Section 45 of the Indian Evidence Act, praying the Court below to send Ex.A1 – promissory note to the handwriting expert, FSL Hyderabad, for comparison with the signatures of the petitioner in suit summons, vakalath, written statement and other contemporaneous signature for submission of a report. Resisting the said application, the plaintiff/respondent herein filed a counter, principally on the ground that no contemporaneous documents containing the signatures were filed. The learned Senior Civil Judge, by virtue of an order dated 25.11.2015, dismissed the said application. The said order passed by the learned Senior Civil Judge is under challenge in the present Revision.

4. It is contended by the learned counsel for the petitioner that the order impugned in the Revision 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 also the submission of the learned

counsel that the reasons assigned by the Court below are neither sustainable nor tenable, in view of the decision of this Court in ***Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash and others***^[1].

5. On the contrary, it is vehemently contended by the learned counsel for the respondent/plaintiff that there is absolutely no illegality nor there is any material infirmity in the impugned order and in the absence of the same, the order passed by the Court below is not amenable for any correction by this Court under Article 227 of the Constitution of India. It is also the submission of the learned counsel that since the Court below assigned valid and convincing reasons, the present Revision is liable to be dismissed in the absence of any jurisdictional error.

6. In the above backdrop, now the issue that emerges for consideration of this Court is:

Whether the order passed by the learned Senior Civil Judge is in accordance with law?

7. The defendant/petitioner herein filed a written statement before the Court below, pleading *inter alia* that the suit pronote is a forged/fabricated document and no amount of consideration was passed under the alleged suit pronote and the alleged attestor and scribe are the close friends of the plaintiff and the same are created by the plaintiff and defendant never saw this scribe and attestor.

8. A perusal of the order passed by the learned Senior Civil Judge, which is under challenge in the present Revision, clearly discloses that the learned Judge dismissed the application obviously placing reliance on the judgments of this Court in ***Renu Devi Kedla Vs. Seetha Devi***^[2] and ***M.Narasi Reddy Vs. V.Raghuram Naidu and another***^[3].

9. In fact, a Full Bench of this Court, in ***Bande Siva Shankara***

Srinivasa Prasad Vs. Ravi Surya Prakash and others (1 supra), at

Paragraph No.15, held as under:

“15. It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in Janachaitanya Housing Limited v/s. Divya Financiers (2008 (3) ALT 409 (DB)), as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue.”

10. Obviously, the Court below had no occasion to look into the said principle laid down by the Full Bench of this Court as the Full Bench rendered the said judgment on 18.12.2015, whereas the order under challenge in the present Revision is dated 25.11.2015. Therefore, having regard to the facts and circumstances of the case, this Court is of the considered opinion that the ends of the justice would be met, if the matter is remanded to the learned Senior Civil Judge for fresh consideration, in accordance with law.

11. For the aforesaid reasons, Revision is allowed, setting aside the

order in I.A.No.447 of 2015, dated 25.11.2015, passed by the learned Senior Civil Judge and consequently, I.A.No.447 of 2015 stands restored to file and the said I.A. is remanded to the Court below for fresh consideration, in accordance with law, after giving notice to all the stake holders.

12. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

17.06.2016

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[\[1\]](#) 2016 (2) ALD 1 (FB)

[\[2\]](#) 2004 (6) ALT 429

[\[3\]](#) 2015 (2) ALT 529