

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.5281 of 2016

ORDER:

This Revision is filed challenging the order dt.18-08-2016 in I.A.No.773 of 2016 in O.S.No.489 of 2011 of the Additional Senior Civil Judge, Eluru.

2. Petitioners are defendants in the suit. The respondent filed the said suit against petitioners for recovery of amount on the basis of a promissory note allegedly executed by the husband of 1st petitioner in favour of respondent.

3. Petitioners took a plea that the signature of the husband of 1st petitioner was forged. They also cross-examined P.Ws.1 and 2 on the aspect, but the suggestions given to them were denied by P.Ws.1 and 2. Thereafter the evidence of petitioners was also closed and the matter was posted for arguments. After arguments were also heard, the matter was posted for judgment.

4. At that stage, an application was filed by petitioners to send the document for expert opinion on the question whether the signature of husband of 1st petitioner on the promissory note is forged.

5. This application was dismissed by the Court below on the ground that the petitioners did not take any steps for sending the disputed document for expert opinion. The Court below held that burden is on the petitioners to establish the plea of forgery and they

should have taken steps after the evidence of respondent was closed, but they did not do so. It held that there were no *bona fides* on the part of petitioners.

6. Challenging the same, this Revision is filed.

7. Heard Sri Kambampati Ramesh Babu, leaned counsel for petitioners and Sri G.Venugopal Reddy, learned counsel for respondent.

8. Learned counsel for petitioners contended that the view expressed by the Court below that after the evidence of respondent only the petitioners can seek to send the disputed documents for examination by a handwriting expert for opinion about validity of the signatures on them, is not correct in view of the decision of the Division Bench of this Court in **Janachaitanya Housing Ltd Vs. Divya Financiers¹**.

9. The Division Bench considered the question as to the appropriate stage when applications for expert opinion can be filed. After reviewing the case law on the subject, it held that the Court cannot lay down any hard-and-fast rules controlling the discretion of the Court to send the disputed documents/writings for the opinion of the expert or to examine him in support of such opinion. It held that on sending the document to handwriting expert and on receiving report, parties, on showing sufficient cause, may call upon the Court to permit them to examine handwriting expert or any witness in

¹ 2008(3) ALT 409 (D.B.)

support or rebut the said opinion. It further held that no time could be fixed for filing applications under Section 45 of the Indian Evidence Act, 1872 for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same 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 the each case.

10. Learned counsel for respondent, however, contended that in view of the conduct of petitioners in not doing anything till the matter is posted for arguments, the exercise of discretion by the Court below ought to be respected and the Revision, therefore, should be dismissed.

11. Admittedly, the defence of forgery was taken by petitioners in the written statement and they had also cross-examined P.Ws.1 and 2 on the aspect. Since this is the principal defence of petitioners in the suit, if they are deprived of an opportunity to establish it, gross injustice would be caused to them. No doubt, there is considerable delay on the part of petitioners in filing the said application. However, on that sole ground, I am of the opinion that the petitioners cannot be denied an opportunity to have the disputed writings examined by a handwriting expert.

12. The decision of the Division Bench of this Court is clearly apposite and in view of the said legal position, no time could be fixed for filing application under Section 45 of the Indian Evidence Act,

1872 for sending the disputed writings to an expert for comparison and opinion and the same should be left to the discretion of the Court. I am of the opinion that the Court below ought to have considered the request of the petitioners and allowed I.A.No.773 of 2016.

13. For the aforesaid reasons, the Civil Revision Petition is allowed; the order dt.18-08-2016 in I.A.No.773 of 2016 in O.S.No.489 of 2011 of the Additional Senior Civil Judge, Eluru is set aside; and the said I.A. is allowed. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-11-2016
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