

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2774 of 2011

ORDER:

This Civil Revision Petition by the petitioner/defendant under Article 227 of the Constitution of India is directed against the order dated 16.06.2011 of the learned Senior Civil Judge, Bhimavaram passed in I.A.no.443 of 2011 in O.S.no.183 of 2006 filed by the defendant under Section 45 of the Indian Evidence Act requesting to receive certain documents and to send the same to the Government handwriting expert to furnish an opinion as to whether the writings, viz., "KVNMy Due 29-12-2000" thereon are written by the plaintiff in his own handwriting or not and also to furnish an opinion on the aspects mentioned in the petition list.

2. I have heard the submissions of the learned counsel for the 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. To being with, it is necessary to refer to the pleadings of the parties.

3.1 The case of the defendant in support of his request in the aforementioned application is as follows: "He is the defendant in the suit filed by the plaintiff for recovery of money. He is resisting the suit by filing a detailed written statement-cum-set off-cum-counter claim. On the side of the defendant, exhibits B1 to B6 were already marked. The plaintiff in his own handwriting had mentioned the name of the defendant and the date 29.12.2000 on the corner of exhibit B5 slip admitting his dues, which are payable to the defendant, related to the purchase of gold jewellery etcetera from the defendant. Thus, the plaintiff had accepted the amounts due to the defendant, which are shown on all the slips filed and marked on behalf of the defendant. When the plaintiff was examined as PW1 and when the slip is shown to him during his cross-examination, he had denied the handwriting thereon wantonly. If he is now directed to give writings, he will certainly

change his handwritings. The plaintiff knowingly or unknowingly had filled up the Vakalat, the process memo, the court fee memo, the bank challan related to payment of court fee and had also written the docket annexed to the Photostat copy of the *pro note* filed along with the suit. No more documents are required to be produced by the defendant and he is also not in a position to produce more documents than the said documents, which contain the writings of the plaintiff. Therefore, he is seeking comparison of the writings of the plaintiff on the said documents with the writings on exhibit B5 slip as such a comparison would amply establish that the writings on exhibit B5 slip aforementioned are also written by the plaintiff himself. Instead of making a comparison by a naked eye, it is advisable to have an opinion of the handwriting expert in that regard. The defendant is waiting to come across the writings of the plaintiff, which contain the number '29'. After a long wait, the defendant could find such writing of the plaintiff on the notice dated 29.06.2010 given by the plaintiff under Order XII Rule 8 of the Code. Since the waiting has fructified, the defendant is advised to file the present petition. The defendant is prepared to bear all the expenses."

3.2 Per contra, the case of the plaintiff, in brief, is this: "The material allegations in the affidavit of the defendant are false. Exhibit B5 and other slips contain the handwriting of the plaintiff as stated by the defendant is false. Since exhibit B5 is confronted to the plaintiff, the plaintiff is likely to change his handwriting if he is called upon to give his writings is a false allegation. The defendant had admitted the transaction under the suit promissory note and that he had made part payments. When a demand notice was issued prior to the suit, neither a reply was given nor was the demand in the notice complied with. The plaintiff from the beginning is denying the truth, validity and the admissibility of the documents being relied upon by the defendant in support of his counter claim. The defendant clearly admitted the suit debt due to the plaintiff and also part payments made under the suit promissory note and did not produce any authenticated document like account/s in support of his counter claim related to the alleged credit gold dealings. The documents being relied upon by the defendant are

fabricated and manipulated. The plaintiff never went to the shop of the defendant and had never placed any order of indent and never purchased any gold ornaments. The plaintiff did not also take a hand loan from the defendant as alleged in his written statement/counter claim. The slips, exhibits B1 to B6, do not contain the gold shop name; and, any related documents like the orders or indents containing signatures of the plaintiff, the day-book and any signed accounts duly maintained by the defendant in the regular course of business are produced. The slips do not contain sufficient revenue stamps. The facts and circumstances of the case show that the receipts are manipulated. The petition is frivolous, vexatious and is liable to be dismissed.”

4. On merits and by the orders impugned, the trial Court had dismissed the application of the defendant. Therefore, the defendant had filed this revision.

5. The learned counsel for the defendant while reiterating the case of the defendant would contend as follows:

It is not a case where the defendant had requested the Court to obtain the signatures of the plaintiff in open Court as there is a possibility of the plaintiff disguising and changing his signatures. The trial Court had earlier erroneously dismissed the application adverting to the requirement of contemporaneous signatures and writings. The Court below ought to have seen that the plaintiff had deliberately and with a *mala fide* intention had denied his signatures and writings on the documents related to the purchase of gold articles and therefore, the defendant is entitled to make a request to the Court to send the relevant documents and the disputed document to a handwriting expert and obtain the opinion in regard to the genuineness or otherwise of the disputed writings in order to substantiate his defence and also the counter claim. The Court below erred in observing that since the scribe of exhibits B1 to B6 is examined, there is no need to send the document to an expert for comparison and obtaining an opinion. The Court below ought to have seen that the plaintiff denied his writings and signatures

in order to escape from the liability.

6. On the contrary, the learned counsel for the plaintiff had supported the orders of the Court below, while reiterating the pleaded case of the plaintiff.

7. Before proceeding further, it is necessary to mention that the learned counsel for the defendant had placed reliance on the following decisions:

(i) **Arjun Singh v. Mohindra Kumar**^[1] is relied upon in support of the contentions that an interlocutory order does not operate as *res judicata* in a subsequent proceeding and that the principle of *res judicata* cannot be invoked when a second or subsequent proceeding is filed at a different stage of the same suit under different set of facts and circumstances. Placing reliance on this decision, it is submitted that the interlocutory orders do not decide in any manner the merits or the controversy in issue in the suit and that as such the interlocutory orders are subject to alteration and variation by subsequent application for the same relief, particularly on the proof of new facts or new situations, which subsequently emerge and that therefore, the trial Court was in error in dismissing the application of the defendant having referred to an earlier interlocutory order.

(ii) **Kolli Ranga Rao v. Kolli Varalakshmi Janani**^[2] is relied upon in support of the contention that an application filed under Section 45 of the Indian Evidence Act filed with a request to send the necessary and relevant documents to an expert for furnishing an opinion in regard to genuineness or otherwise of the disputed signatures and writings on the disputed documents cannot be dismissed merely on the ground of laches and that such application though filed belatedly can be considered and allowed exercising the discretionary power of the Court in a just and reasonable manner, provided the facts of the case warrant exercise of such judicial discretion.

8. I have bestowed my attention to the facts and I have given earnest consideration to the submissions. I have gone through the decisions. There is no dispute with the legal propositions being relied upon by the learned counsel for the defendant/revision petitioner.

9. Reverting to the facts of the case, it is to be first noted that the plaintiff brought the suit for recovery of money and that the defendant filed a written statement-cum-set off-cum-counter claim. Be it noted that after the defendant exhibited exhibits B1 to B6 on his side, he had filed the instant application requesting the Court to send exhibit A5 slip to an expert for obtaining his opinion in regard to genuineness or otherwise of the writings of the plaintiff said to be available on the said document in order to substantiate his defence and claim. The case of the defendant in support of the said request is that the plaintiff had certain gold transactions with the defendant and that in that connection, exhibits B1 to B6 slips had emanated and that particularly, exhibit B5 slip contains the plaintiff's handwriting and that the plaintiff has mentioned, in his hand writing, the name of the defendant and the date '29.12.2000' on the corner of exhibit B5 slip admitting his dues in regard to purchase of gold jewellery etcetera from the defendant; but, when that slip was confronted to the plaintiff/PW1 during the cross-examination, he had wantonly and intentionally denied the writings and that the plaintiff's handwritings are available on the vakalat, process memo, court fee memo, bank challan relating to court fee payment, docket written on the copy of the pronote filed along with the suit and also on the notice dated 29.06.2010 issued under Order 12 Rule 8 and that the said writings of the plaintiff can be compared with the disputed writings by an expert and that an expert can give an opinion based on such admitted writings as to whether the disputed writings on the disputed documents are that of the plaintiff or not and hence, it is necessary to send the necessary and relevant documents to an expert and obtain his opinion to enable the defendant to substantiate his defence and claim. As already noted, the plaintiff is not only denying the alleged gold transaction with the defendant but also the genuineness of exhibit B1 to B6 being relied upon by the defendant in support of his set off or counter claim. The trial Court had rejected the request of the defendant *inter alia* observing that there are no writings of the plaintiff of comparable standard and of a contemporaneous period and that since the scribe of exhibits is already examined, there is no need to call for an opinion from an expert in the facts

and circumstances of the case. No doubt, in regard to the requirement of a contemporaneous writings and signatures, a Full Bench of this Court in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu** (died) per L.Rs and others^[3], had held as follows:

“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 handwritings/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 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. Divya Financiers [(2008)3 ALT 409 (D.B)], 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.”

In view of the said findings, merely on the ground of non-availability of writings or signatures of a contemporaneous period, a request to send the disputed document to an expert cannot be denied.

10. Be it noted that the learned counsel for the plaintiff would submit that the plaintiff's alleged claim is based only on exhibits B1 to B6 slips, which allegedly contain the handwritings etcetera of the plaintiff and that except the said slips, there is no other supporting document filed by the plaintiff to fasten the liability on the plaintiff and that the said documents under law are not by themselves sufficient by any means to fasten the liability on the plaintiff and

that earlier, the defendant had filed a similar application in I.A.no.443 of 2011 and that the said application was dismissed and that the present application filed belatedly in a suit of the year 2006 is not maintainable and that even if the expert furnishes an opinion, the same is not helpful to the defendant to establish his counter claim and that the trial Court had rightly dismissed the application of the defendant. Be it noted that that the plaintiff's suit is based on pronote and the written statement is filed with a claim of set off/counter claim. It is fairly conceded that counter claim is not made within the time allowed under law and that what remains in the claim is only a set-off. It is fairly conceded that since the claim is only in the nature of set-off, the defendant cannot dispute the claim of the plaintiff as a claim of set-off would not lie without the admission of the claim of the plaintiff. Admittedly, exhibit B5 is confronted to the plaintiff and his evidence on that document is brought before the Court. The defendant also gave evidence on oath on the documents being relied upon by him and had further examined the scribe of the documents. The trial Court having noted that for the same relief, the defendant had earlier filed an application and was unsuccessful had further observed that even though the principle of *res judicata* is not applicable, still there are no merits in the application and that the request of the defendant to send the document to an expert, therefore, need not be considered. Having regard to the facts and circumstances of the case and the evidence brought on record, the trial Court, after exercising its discretion judiciously, had opined that it is not necessary to obtain an expert's opinion as desired by the defendant. On careful examination of the facts and circumstances of the case, this Court is of the well-considered view that the order impugned in this revision does not warrant interference, more particularly, when no valid and sufficient grounds warranting interference with the order impugned are made out.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

29th June, 2016
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[\[1\]](#) AIR 1964 SUPREME COURT 993(1)
[\[2\]](#) 2011(4) ALT 252
[\[3\]](#) 2016(2) ALT 248(F.B)