

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

CIVIL REVISION PETITION No.4709 OF 2016

ORDER:

Defendant in O.S.No.15 of 2011 on the file of the Court of the Principal Senior Civil Judge, Anantapuramu, is the petitioner in the present revision filed under Article 227 of the Constitution of India. This revision assails the order passed by the said court in I.A.No.529 of 2015.

2. Heard Sri I.Venkata Prasad, learned counsel, appearing for the petitioner, apart from perusing the material available before the court. Despite service of notice, none appears for the respondent.

3. The respondent herein instituted the above said suit for recovery of amount on the foot of a promissory note. In the said suit, the defendant/petitioner herein filed the present I.A.No.529 of 2015 under the provisions of Section 45 of the Indian Evidence Act, praying the court below to send Exhibit.A.1 promissory note to hand writing expert for opinion. The said I.A. was contested by the plaintiff/respondent herein by filing a counter. The learned Principal Senior Civil Judge, Anantapuramu, dismissed the said I.A.No.529 of 2015, by way of an order dated 04.07.2016. The validity and legal sustainability of the said order passed

by the learned Senior Civil Judge is under challenge in the present revision.

4. According to the learned counsel for the petitioner, the questioned order is erroneous and contrary to law. It is further submitted that in view of the categorical denial of signature on the suit promissory note by the defendant, the court below ought to have sent the suit promissory note for expert opinion. It is further argued that the court below grossly erred in dismissing the application on the ground of delay. In support of his submissions and contentions, learned counsel for the petitioner places reliance on the judgment of the Hon'ble Apex Court in ***State (Delhi Administration) Vs. Pali Ram***¹.

5. In the above backdrop, now the issue that arises for consideration in the present revision is:

“Whether the court below is justified in dismissing the application filed by the petitioner under Section 45 of the Indian Evidence Act and whether the same warrants any interference of this Court under Article 227 of the Constitution of India?”

6. In the instant case, the suit is one for recovery of amount on the foot of a promissory note. The defendant/petitioner herein filed a written statement in the month of March, 2011 and paragraph No.5 of the said written statement reads as under:

¹ AIR 1979 SC 14

“5. The defendant submit that, the defendant has registered mortgaged of his own property in Anatapur town and get a loan amount of Rs.98,000/- from the plaintiff in the year 22.02.1995. But the plaintiff has received the interest on the said amount in every month from this defendant. Due to that some misunderstanding between them and this plaintiff filed a suit against this defendant before this Hon’ble court. Since the date on wards the plaintiff has bored grudge against this defendant and in order to harass this defendant the plaintiff has forged and fabricated and manipulated the signatures of the plaintiff and filed this unjust suit in order to harass this defendant.”

7. The above paragraph of the written statement clearly reflects that the defendant denied the signature on the promissory note while pleading that the same is forged, fabricated and manipulated. A perusal of the order under challenge patently discloses that the learned Senior Civil Judge dismissed the application broadly on three grounds namely:

- 1) When there is denial by the defendant in the written statement, it is for the plaintiff to disprove the same;
- 2) The court can compare the signatures under Section 73 of the Indian Evidence Act; and
- 3) Since there is a delay of five years from the date of filing written statement, the request cannot be acceded to;

8. As regards the first ground, it is required to be noted that the suit itself is instituted on the basis of a promissory note pleading that the defendant executed the suit promissory note. It is also an admitted fact that by way of filing a written statement, the defendant denied his signature on the suit promissory note in clear terms. The reason assigned by the court below that there is no necessity for the defendant to disprove the signature, in the considered opinion of this court, is not a valid reason as the defendant himself is coming forward with the application and with a plea that he did not execute the same.

9. As regards the second ground, the reason assigned by the court below is that the court can compare the admitted signatures with that of the disputed signatures of the defendant in order to arrive at a conclusion. In this connection, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in **State (Delhi Administration) Vs. Pali Ram** cited by the learned counsel for the petitioner. In the said judgment, the Hon'ble Apex Court, at paragraph No.29, held as under:

“29. The matter can be viewed from another angle also. Although there is no legal bar to the Judge using his own eyes to compare the deputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence, and caution, hesitate to base his finding with regard to the

identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.”

10. In view of the law laid down in the above referred judgment, the reason assigned by the learned Senior Civil Judge for dismissing the application, in the definite opinion of this court, cannot be sustained.

11. As regards the third ground i.e., the delay in filing the application - the delay alone cannot be the criteria for dismissing the applications under Section 45 of the Indian Evidence Act, if by ordering such applications the reality can be achieved. Therefore, the order passed by the court below and the reasons contained therein, having regard to the facts and circumstances of the cases, cannot stand for judicial scrutiny. The court is also of the opinion that in the event of inviting opinion from the expert, the same would also be helpful to the court below for arriving at a reasonable and just conclusion.

12. For the aforesaid reasons, Revision is allowed, setting aside the order dated 04.07.2016 passed by the Court of the Principal Senior Civil Judge, Anantapuramu, in I.A.No.529 of

2015 in O.S.No.15 of 2011 and consequently, I.A.No.529 of 2015 stands allowed and the court below shall take necessary steps accordingly.

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

A.V.SESHA SAI, J

11.11.2016

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