

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION NO.4320 of 2011

Date: 29-01-2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 18.08.2011 passed in I.A.No.246 of 2011 in O.S.No.14 of 2009 by the Senior Civil Judge, Sathupalli, Khammam District.

The petitioner/plaintiff filed the suit for recovery of money based on two promissory notes. The respondent/defendant filed written statement denying the transactions stating that no attestors have signed on the suit pro-note as well as under the part payment endorsements. Therefore, the petitioner filed the present I.A. under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act') seeking to send the suit pro-notes under Ex.A.1 along with admitted signatures for comparison and for report. The learned Senior Civil Judge refused to send the document for expert's opinion holding that the Court has ample power under Section 73 of the Act to compare the signatures and writings. It was also held that the application was filed at a belated stage of arguments after completion of evidence on both sides, to drag on the suit proceedings, and accordingly dismissed the application. Hence the present revision petition is filed.

Heard Ms. G. Sindhu, learned counsel representing Sri K. Chidambaram, learned counsel for the petitioner and Sri Kowturu Vinay Kumar learned counsel for the respondent.

Learned counsel for the petitioner, by placing reliance on a judgment of this Court in **Janachaitanya Housing Ltd., v. Divya Financiers**^[1] submits that even at the stage of hearing, if the Court feels that it must seek the help of an expert in coming to a proper conclusion, it can send the document on its own accord by requiring

the party concerned to meet the expenditure, and prayed for setting aside the order of the lower Court.

Learned counsel for the respondent supports the order of the Court below and vehemently opposes for granting of such relief in the revision petition.

At the outset, it may be pointed out that the application has been made at a belated stage of arguments. Right from the beginning, in the written statement and in the depositions, the defendant had taken a consistent stand that the suit pro-notes were not executed by him, and only for the purpose of saving limitation payment of certain amounts have been shown by the plaintiff. He also denied the endorsements with respect to such payments, stating that the plaintiff, if so desired, ought to have taken steps to file an application to send the disputed document for comparison to an expert at the initial stage of suit proceedings but not at the stage of arguments.

In **Janachaitanya Housing Ltd., v. Divya Financiers** this Court held as under:

“It is always competent for the Court to undertake comparison of signatures of disputed document by itself. The opinion rendered by an expert is only a supporting material and cannot be treated as conclusive. Ultimately, it is for the Court to come to a conclusion as to the genuinity and otherwise of the signatures. If the Court is capable of forming of such an opinion on the strength of oral and documentary evidence before it, in the exercise undertaken under [Section 73](#) of the Act, the necessity to send the document for expert's opinion may not arise. On the other hand, even at the stage of hearing, if the Court feels that it must seek the help of an expert in coming to a proper conclusion, it can send the document on its own accord by requiring the party concerned to meet the expenditure.

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. 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 support or rebut the said

opinion.”

Having considered the rival submissions and in the light of the judgment of a Division Bench of this Court referred to supra, which is binding on this Court the relief sought by the petitioner cannot be said to be at a belated stage. Especially considering the fact that the suit came to be filed in the year 2009 and the I.A came to be filed in the year 2011. Further, though it is permissible for the Court to compare the signatures/writings, the Presiding Officer, not being an expert in a given case, may not be able to come to a positive conclusion that the signatures/writings are similar and one and the same and have been executed by the same person. Merely because the Court has power to compare the signatures under Section 73 of the Act, it cannot be a reason to deny the right of a party to send the disputed document to an expert for comparison of signatures and for report, as it would always be in the interest of justice to have a qualified expert's opinion, which would be more reliable evidence.

In the present case, the order of the learned Senior Civil Judge is somewhat inconsistent. While dismissing the application, the learned Judge once again held that it is not the stage to consider the petition for sending the disputed document to an expert, thereby meaning that there is one more opportunity to the petitioner to send the document to an expert. This contradicts the very stand of the learned Judge that the application came to be filed at a belated stage. As the suit itself is filed for recovery of money delaying the suit does not enure any benefit to him in any manner notwithstanding the contracted rate of interest. The court has discretion to award interest at a lower rate than the contracted rate. Viewed from any angle, the revision petition deserves to be allowed.

Accordingly, the Civil Revision Petition is allowed setting aside the order dated 18.08.2011 passed in I.A.No.246 of 2011. However, considering the fact that the suit proceedings were stayed from the past five years, there shall be a direction to the Court below to make an

endeavour to dispose of the suit as expeditiously as possible preferably within a period of eight months from the date of receipt of a copy of this order.

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

CHALLA KODANDA RAM, J.

29th January, 2016
Js.

[\[1\]](#) 2008 (3) ALT 409 (DB)