

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.3134 & 3157 of 2015

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COMMON ORDER:

C.R.P.no.3134 of 2015 by the unsuccessful petitioner/plaintiff in O.S.no.541 of 2012 is directed against the order dated 10.06.2015 of the learned Senior Civil Judge, Kadapa passed in I.A. No.636 of 2015 filed under Sections 45 and 73 of the Indian Evidence Act requesting to send the handwriting and signatures of the defendant/respondent that may be taken in open Court to a handwriting expert for comparison of the same with his disputed signatures/writings on the suit promissory note and furnish an opinion; C.R.P.no.3157 of 2015 is directed against the order dated 10.06.2015 passed I.A. No 637 of 2015 filed under Section 151 of the Code of Civil Procedure, 1908 for reopening the suit for the said purpose.

Since both these revisions arise out of the interlocutory orders passed in one and the same suit, they are being disposed of by this common order.

2. I have heard the submissions of the learned counsel for the petitioner/plaintiff. I have perused the material record. Though notices are served on the defendant in both the revisions, none appeared.

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3. The core facts, which are necessary to be stated as a preface to this common order, in brief, are as follows:

3.1 The plaintiff brought the suit against the defendant for recovery of a sum of Rs.1,62,555/- with subsequent interest and costs on the foot of a promissory note. One of the contentions of the plaintiff is that the defendant himself scribed and duly executed the promissory note. However, the defendant had filed a written statement resisting the suit and denied the very execution of the promissory note and *inter alia* contended that the plaintiff is a stranger. When the evidence of both the sides has concluded and when the suit is at the stage of adjudication after hearing the arguments of both the sides, the plaintiff had filed the aforementioned two applications seeking the

aforementioned reliefs. The said applications were resisted by the defendant *inter alia* contending that the petitions are highly belated.

3.2 On merits and by the orders impugned in these revisions, the trial Court had dismissed both the petitions *inter alia* observing that on reporting no further evidence, the plaintiff's side evidence was closed and that the plaintiff, who contends that the attestors of the promissory note are close associates of the defendant, did not file an application to summon the said attestors, who are allegedly inimical to the plaintiff, and that, therefore, it is unable to grant the requests of the plaintiff. The trial Court had further observed in its orders that the plaintiff did not make a request for comparison of the thumb marks of the defendant by an expert though the thumb mark of the defendant is also available on exhibit A1, the suit promissory note, and that therefore, there are no merits in the petitions.

4. The learned counsel for the petitioner/plaintiff while reiterating the case pleaded had *inter alia* contended as follows:

The suit is brought on the foot of a promissory note, which is scribed and executed by the defendant. The defendant is denying the writings and the signature on the suit promissory note. The attestors being close associates of the defendant did not co-operate with the plaintiff for their examination before the Court. Mere summoning of such witnesses, who are hostile to the plaintiff would serve no useful purpose. In the circumstances, the plaintiff, in order to prove and substantiate his case, is left with no other option but to make a request to send the disputed promissory note to a handwriting expert for comparison of the writings and the signature of the defendant thereon with his writings and signature that may be obtained in open Court and hence, these two applications are filed before the trial Court.

He would also submit that the trial Court had erroneously dismissed the applications on the grounds of delay and failure of the plaintiff to take summons to attestors for their examination ignoring the fact that the said attestors are not co-operating with the plaintiff and are unwilling to give evidence and speak the truth.

5. Dealing first with the aspect of delay, a Division Bench of this Court in **Janachaitanya Housing Limited v. Divya Financiers** had held as under, while answering a reference.

“No time could be fixed for filing applications under Section 45 of the Indian Evidence Act 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.”

6. Further, a Full Bench of this Court in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu (died) per L.Rs** ^[1] had approved the said view of the Division Bench and also held that there can be no hard and fast rule that there should be a document of a contemporaneous period containing writings and signatures for comparison by expert and that the Court is not debarred to seek an expert's opinion as to comparison of disputed handwritings/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act by sending to an expert any document and that such a request cannot be refused merely because there is time gap between the admitted handwriting/signature and the disputed handwriting/signature or that the time gap is long. The learned counsel for the petitioner would submit that if the trial Court takes the writings and signatures of the defendant in open Court and sends the same along with his vakalat and the written statement filed before the trial Court, which contain his signature, to an expert for comparison with the disputed writings/signatures on the suit promissory note, the same would serve the desired purpose. He had also stated no objection for the Court directing the expert to furnish an opinion in regard to the thumb impression of the defendant said to be on the suit promissory note by obtaining his thumb impressions also in open Court. Having regard to the submissions and the facts peculiar to the case and the aforesaid reasons, this Court is of the considered view that it is a fit case to grant the requests of the plaintiff and that the orders impugned in these revisions are devoid of merit and are unsustainable.

7. Viewed thus, this Court finds that the orders impugned in these

revisions call for interference.

8. In the result, both the revision petitions are allowed setting aside the orders dated 10.06.2015 respectively impugned in these revisions. As a sequel, I.A.no.636 of 2015 and 637 of 2015 are allowed. The matter is reopened. The trial Court is now directed to obtain the handwritings, the signatures and the thumb impressions of the defendant in open Court as per the practice and procedure and send the same along with the vakalat and his written statement containing his admitted signatures to a Government handwriting expert of the State Forensic Science Laboratory for comparison of the same with the disputed signatures, handwritings and thumb impressions said to be of the defendant on the suit promissory note and furnishing an opinion as to the genuineness or otherwise of the signatures, writings and thumb impressions on the suit promissory note. However, before doing so, the trial Court shall direct the plaintiff to deposit to the credit of the suit, the necessary expenses and fee payable to the expert of the FSL.

There shall be no order as to costs.

Miscellaneous petitions, pending, if any, in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

30th June, 2016
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[\[1\]](#) 2016(2) ALT 248 (F.B.)