

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**Civil Revision Petition No.3336 of 2015**

**ORDER:**

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This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful petitioner/defendant is directed against the orders dated 15.07.2015 of the learned Additional Senior Civil Judge, Gajuwaka passed in IA.no.358 of 2015 in OS.no.386 of 2013 filed under Section 45 of the Indian Evidence Act requesting the Court to send the suit promissory note to a handwriting expert for securing his opinion.

**2.** I have heard the submissions of the learned counsel for the revision 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.** In a suit that was brought by the plaintiff on the foot of a promissory note for recovery of the principal amount of Seven Lakhs of rupees, with interest thereon and costs, the defendant having filed a written statement is resisting the suit *inter alia* contending that the plaintiff had fabricated the suit promissory note with the help of the scribe and the attestors; and that he had never signed on the alleged suit promissory note dated 03.04.2012; and that the signature thereon does not belong to him; and that he knows the plaintiff who is his neighbor and a co-employee in the Steel Plant; and that the plaintiff and the defendant are residents of the same area viz., Kanithi R.H Colony of Gajuwaka; and that the defendant is having disputes with his wife; and that the defendant and his wife are living separately; and that the wife of the defendant is presently living with her parents at Vizianagaram; and that the defendant's wife is having some financial disputes with others; and that one of the creditors

of his wife gave a police complaint against the defendant; and that on that the police had called the defendant to the police station; and that at that time the plaintiff had accompanied the defendant to the police station; and that the defendant had given an explanation in writing at that time; and that, therefore, while the defendant was signing on the explanation, the plaintiff had an opportunity to observe the signature of the defendant; and that taking advantage of the said fact the plaintiff might have forged the signature of the defendant on the suit promissory note with the help of the scribe and the attestors. In this background of pleadings in the main proceeding, the defendant had filed the subject application before the trial Court reiterating his case and by also stating that in the light of his defence that he had never executed the suit promissory note in favour of the plaintiff, it is very much necessary to send the suit promissory note to a handwriting expert for furnishing his opinion and to enable the defendant to establish his defence. *Per contra*, the plaintiff while reiterating his stand that the suit promissory note is true and genuine had resisted the application of the defendant by further contending that the petition is intended to drag on the suit proceedings; and that the Court has got ample power to compare the signature on exhibit A1 suit promissory note with the other signatures of the defendant, which are undisputed and/or admitted in view of the provision of Section 73 of the Indian Evidence Act; and that the Court may, therefore, compare the signatures; and that the Court can also obtain the signatures of the defendant for such comparison; and hence, there is no need to grant the request of the defendant to send the suit promissory note to an expert for seeking his opinion in regard to the genuineness or otherwise of the suit promissory note. The Court below on merits had dismissed the application of the defendant. Therefore, the aggrieved defendant filed this Revision petition.

**4.** In the grounds of revision the contentions of the defendant are reiterated; and it is urged at the hearing that sending of the disputed suit promissory note to an expert for furnishing an opinion is necessary for the Court to arrive at a just conclusion in the matter; and that the observations of the Court below in the order impugned that the evidence already brought on record i.e., the evidence of PW2 corroborates the evidence of PW1 in all material aspects is unnecessary and unwarranted; and that the Court below ought not to have made such far reaching observations in the orders impugned, as the appreciation of evidence has to be done at an appropriate later stage when the trial Court would be called upon to adjudicate the issues involved in the *lis*; and that the Court below ought to have seen that it is the responsibility of the plaintiff to prove that the consideration had passed under the suit promissory note and that the plaintiff has capacity to lend such a huge amount. Finally, the learned counsel for the defendant prayed for allowing the revision.

**5.** On the other hand, the learned counsel for the plaintiff while supporting the orders of the Court below had reiterated the case and contentions of the plaintiff, which are already stated *supra*, in detail.

**6.** I have given earnest consideration to the facts and the submissions. At the outset, it is to be noted that the Court below ought not to have made certain observations in the orders impugned on the quality/sufficiency or otherwise of the evidence already available on record to the effect that “the evidence of PW2 corroborates the evidence of PW1 with regard to passing of consideration and that PW2, the attesor and direct witness, had categorically deposed that he had witnessed the execution of exhibit A1 and the passing of consideration in the presence of the plaintiff, the defendant, the other attesor and the scribe and that nothing was elicited in the cross examination of PW2 to

disbelieve the said evidence” as making of such observations would certainly amount to pre-judging the issues involved in the suit. The trial court ought to have refrained itself from entering into the domain of appreciation of evidence at the stage of disposal of an interlocutory application filed under Section 45 of the Evidence Act by the defendant and ought to have confined its findings to the aspects relevant to the merits of the said interlocutory application and ought not to have made far reaching observations, which will have a bearing on the merits of the issues involved in the main suit. Therefore, the said observations by the Court below are unquestionably not only impermissible but also detrimental to the case of the defendant. Therefore, it is trite to first order that the said observations in the order impugned of the Court below shall stand eschewed.

**7.** Coming to the merits of the interlocutory application and the question as to whether the defendant had made out valid and sufficient grounds for granting his request to send the suit promissory note to a handwriting expert for furnishing his opinion as to the genuineness or otherwise of the signature said to be of the defendant on the said document, what is to be noted is that the trial in the suit had made substantial progress and PWs1 and 2 are already examined. The defendant and the plaintiff are known to each other. It is the specific defence of the defendant that he is having disputes with his wife; and that his wife is having some disputes with others in regard to financial matters; and that on the complaint of one of the creditors of his wife, he was called by the police; and that at that time the plaintiff who had accompanied him to the police station had seen him signing on the explanation given in writing; and that the plaintiff, who, therefore, had an opportunity to observe the signature of the defendant while signing on the explanation in the police station might have subsequently forged his signature/s on the suit

promissory note and fabricated it with the help of the scribe and the attestors. Further, as rightly contended by the defendant, the plaintiff has to not only prove the signing of the suit promissory note by the defendant but also the passing of consideration, that is, the due execution of the suit promissory note and the truthful nature of the transaction comprised therein. There is no hard and fast rule that in every case on the foot of a promissory note where the defence is one of forgery and fabrication, the Court shall invariably send the disputed promissory note to a handwriting expert for securing an opinion. Further, in this case, the defendant is gainfully employed and is working in steel plant. Therefore, his signatures would be available on his office records cannot be disputed. There might be some papers also in his office with his signatures of a period contemporaneous to the period of the suit promissory note. He made a mere request to the Court to send the suit promissory note to an expert for securing opinion but did not either make available or state about any documents containing his signatures, which are of reliable and comparable standard. The Court below in its discretion had opined that the Court, if necessary, would exercise the power to compare the signatures of the defendant available on record by invoking the provision of Section 73 of the Evidence Act; and that in the facts and circumstances of the present case, there is no need to consider the request of the defendant. Having regard to the discussion coupled with reasons, this Court is of the considered view that in the facts and circumstances peculiar to the case, the order impugned does not warrant interference.

**8.** In the result the Civil Revision Petition is dismissed. No costs.

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

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30<sup>th</sup> March, 2016  
Vjl

**M. SEETHARAMA MURTI, J**