

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2775 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 06.07.2011 of the learned Senior Civil Judge, Bhimavaram passed in I.A.no.769 of 2011 in O.S.no.183 of 2006 filed by the defendant under Order XIII Rule 10 of the Code of Civil Procedure Code, 1908 requesting to send for the vakalat and written statement etcetera for comparison of the writings of the plaintiff there on by a handwriting expert with the disputed writings on exhibit B5 receipt.

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.

The case of the defendant in support of his request in the aforementioned application is as follows:

The plaintiff brought the suit on the foot of a promissory note. The defendant is resisting the suit by filing written statement-cum-set off or counter claim. The defendant was examined as DW1; and he had also examined his supporting witness as DW2. The plaintiff in his own handwriting had written the name of the defendant and other writings on the left hand side corner of exhibit B5 and the said writings are as under: 'KVNm due 29-12-2000'. The plaintiff is a practicing advocate; and to evade his liability, he had denied his writings on the said document. Therefore, the defendant had filed I.A.no.443 of 2011 to send certain documents to a handwriting expert. The plaintiff had resisted the said application. The trial Court observed that the writings on exhibit B5 are of the year 2000 and that the writings on the other documents are of the year 2006 and that therefore, there are no contemporaneous writings. Having so observed, the trial Court had accordingly, dismissed the

said petition on 16.06.2011. It is impossible for the defendant to produce handwritings of the plaintiff of the year 2000. After through enquiries, the defendant came to know that the plaintiff and another counsel together had filed vakalat for the 3rd defendant-Borusu Satyanarayana Appa Rao in O.S.no.28 of 2000 on the file of the trial Court on 07.06.2000 and also written statement on behalf of the party in that suit and that the said suit was disposed of on 31.07.2001 and that the plaintiff and the other advocate had also filed vakalat for the defendant in O.S.no.87 of 2000 on 11.09.2000 and that the said suit was disposed of on 29.7.2002 and that the plaintiff and another advocate had filed vakalat for the defendant in O.S.no.49 of 2000 on the file of the Court of the learned I Additional Junior Civil Judge's Court, Bhimavaram and the said suit was disposed of on 04.04.2000. The plaintiff and his wife who is none other than the other advocate never had a pleader's clerk. They are filing vakalat forms and other documents like process memos etcetera into Court by filling the contents in their own handwriting. Thus, there is ample documentary evidence with the handwritings of the plaintiff of the year 2000 in the form of aforementioned documents in the aforementioned suits. The certified copies of the said documents, if any obtained, will not serve any purpose, i.e., the purpose of comparison of the writings thereon of the plaintiff with the disputed writings of the plaintiff on exhibit B5. Therefore, it is necessary to summon the said original documents containing the handwritings of the plaintiff from the aforementioned suits. Hence, the defendant is advised to file the petition to send for the documents mentioned in the petition list from the aforementioned suits, viz., (i) O.S.no.28 of 2000 on the file of the learned Senior Civil judge, Bhimavaram, which was disposed of on 31.07.2001; (ii) O.S.no.87 of 2000 on the file of the Senior Civil Judge's Court, Bhimavaram which was disposed of on 8.9.2004 and which are available in the record room as the records are consigned to the record room.

4. On the contrary, 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 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 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.”

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

6. 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

erroneously dismissed the earlier application advertent 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 ought to have seen that the plaintiff had denied his writings in order to escape from the liability. Since, the defendant had filed a fresh application for sending the disputed document to an expert, it is necessary to send for the documents from the record room as being sought for by the plaintiff to send the same along with disputed receipt to a hand writing expert for obtaining an opinion in regard to the genuineness or otherwise of the plaintiff's disputed writing on the slip/receipt.

7. 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.

8. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

9. Be it noted that the instant application filed by the defendant requesting to send for certain records from the other suits and that the other application also filed by the defendant with a request to send the relevant documents to an expert for obtaining an opinion, were disposed of by the trial Court simultaneously by separate orders and that the trial Court had dismissed both the applications of the defendant. The instant revision is coming for disposal along with the other revision filed by the defendant assailing the trial Court's orders dismissing the application filed for sending the documents to an expert. To day, this Court by separate orders had dismissed the said other CRP no. 2774 of 2011. In the said orders this Court had finally held as follows: "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." In view of the said dismissal orders passed by this Court in the said revision, it follows that there is no need to send for the records as being sought for by the defendant in the application in IA no. 769 of 2011. Therefore, this Court finds, that as rightly held by the Court below, there is no merit in the request of the defendant to send for the records like vakalats etcetera from the records of the disposed of suits stated to be available in the record room of the Court below. Accordingly, this Court holds that the trial Court is justified in dismissing the application of the defendant and that there is no merit in this revision and that this revision is also liable for dismissal.

10. 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.

M. SEETHARAMA MURTI, J

29th June, 2016
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