

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION NO.974 of 2016

ORDER:

The petitioner has come up with the above revision challenging an order passed by the lower appellate Court dismissing an application filed under Section 45 of the Indian Evidence Act, 1872 (for brevity 'the Act').

Heard the learned counsel on both sides.

The respondent herein filed a suit in O.S.No.845 of 2011 on the file of the Principal Senior Civil Judge, Vijayawada for recovery of money due on a pro-note. The suit was decreed with costs.

The petitioner/defendant filed an appeal in A.S.No.183 of 2013. During the pendency of the appeal, the petitioner filed an application in I.A.No.1839 of 2015 for referring the suit pro-note for examination by a handwriting expert. This application was dismissed by the First Appellate Court by an order dated 23.12.2015. Therefore, the petitioner/defendant is before this Court.

In the written statement, the petitioner/defendant has made a categorical assertion that the suit pro-note was a fabricated and forged document. It appears from the written statement that the said defense was not taken as a bogey of a defense. The defense was in addition to another defense that on the date found on the pro-note the petitioners mother passed away at Hyderabad and that therefore, the petitioner could not have been there at Vijayawada to make the borrowing and for execution of pro-note.

It is true that the petitioner is guilty of negligence and laches in not making an application before the trial Court. But it does not mean that the doors are completely shut. In any case, the opinion rendered by a handwriting expert is only an opinion and the same need not deter the respondent from submitting it for examination by a handwriting expert.

As a matter of fact Section 73 of the Act prescribes the procedure to be followed by a Court, when there is a dispute about the signature born on the suit document.

Section 73 of the Act reads as follows.

“Comparison of signature, writing or seal with others admitted or proved:- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.”

The lower appellate Court does not appear to have taken note of Section 73 of the Act and followed the procedure prescribed therein before throwing out the application under Section 45 of the Act. As a matter of fact, the lower appellate Court is a first Court of appeal, which is entitled to go into the questions of law as well as fact. Since the First Appellate Court has not undertaken this exercise, I am of the view that it should be directed to undertake the exercise.

Therefore, the Civil Revision Petition is allowed, the order of the lower appellate Court passed in I.A.No.1839 of 2015 is set aside and the matter is remitted back to the II Additional District Judge, Vijayawada. The learned Judge shall follow the procedure prescribed under Section 73 of the Act, and thereafter, take a decision as to whether it is necessary to send the suit pro-note for examination by a handwriting expert or not. The lower appellate Court shall take a decision on the application within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall

stand closed.

24th June, 2016
Js.

JUSTICE V. RAMASUBRAMANIAN