

HONOURABLE SRI JUSTICE S.RAVI KUMAR
C.R.P.NO.1838 OF 2016

ORDER:

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This revision petition is preferred questioning order dated 5th February, 2016 in I.A.No.2906 of 2015 in O.S.No.337 of 2013 on the file of Principal Senior Civil Judge, Kadapa.

2. Revision petitioner herein is defendant in the above referred suit, he filed the above referred application to send disputed document to an handwriting expert for comparison of alleged alterations in promissory note. That petition was resisted by respondent/plaintiff and trial Court, on a consideration of material, dismissed the application. Challenging the same, present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioner submitted that trial Court dismissed the application mainly on two grounds, firstly that defendant has not produced contemporaneous handwriting for comparison with disputed handwriting and secondly, it is filed at a belated stage. It is submitted that in the written statement defendant, admitted his handwriting in the promissory note except the alleged material alterations on it, which itself is a document of contemporaneous period which can be compared by the handwriting expert, therefore, finding of trial Court that defendant has not produced contemporaneous document containing admitted handwriting is patently incorrect. He further submitted that defendant filed this application immediately after completion of his evidence, when suit was coming up for further evidence, therefore, finding that it is filed at belated stage is incorrect. He further submitted that words 'lakh' and 'date' including month portion are materially altered which are visible to a naked-eye, therefore, it is a fit case to get opinion of handwriting expert to enable trial Court to arrive at a right conclusion in deciding issue with regard to

material alteration. He submitted that an opportunity may be given to petitioner to prove his defence of material alteration and that order of trial Court is not sustainable.

5. On the other hand, advocate for respondent/plaintiff submitted that DW.1 in his chief examination has clearly admitted that except date and words "one lakh twenty thousand" in the pronote the remaining writing is in his handwriting and even in his written statement he has taken inconsistent versions with regard to plea of material alterations. He submitted that in para 3 of written statement, he denied execution of promissory note, but in subsequent paras, he only denied word 'laksha' and date portion and endorsement in promissory note itself discloses that the handwriting is of his own. He submitted that trial Court after expiry of stay granted by this Court posted the matter for judgment and as revision petitioner filed a memo about pendency of this revision, which is coming up for hearing this day, the Court below has not pronounced judgment and adjourned it and that entire trial is concluded, therefore, at this belated stage, revision petitioner has no right to request the Court to send document to an handwriting expert for comparison and that revision is liable to be dismissed.

6. Now the point that arises for consideration is:

Whether the order dated 05.02.2016 in I.A.No.2906 of 2015 in O.S.No.337 of 2013 on the file of Principal Senior Civil Judge, Kadapa is legal, proper and correct?

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POINT:

7. From submissions of both sides, it appears both plaintiff and defendant are practicing advocates at Kadapa. The suit is filed on the basis of promissory note dated 18.07.2007 for a sum of Rs.1,20,000/-. As seen from the written statement, defendant specifically pleaded that word '20,000' was altered into '1,20,000' and the date '10.01.2007' was altered as '18.07.2007' to save the limitation and to prove this, the document has to be examined by

an handwriting expert by comparing handwriting of defendant with that of alleged material alterations. The trial Court dismissed application mainly on the ground that defendant i.e. petitioner herein has not produced his contemporaneous and admitted handwriting for comparison of disputed alterations by handwriting expert.

8. As seen from impugned order, Court below has observed that without producing such handwriting, handwriting expert cannot compare disputed handwriting to form opinion. But this part of observation cannot be accepted because it is for the handwriting expert to say whether material sent to him is sufficient to make comparison or not, but it is not for Court to decide. Further, as rightly pointed out by the advocate for revision petitioner, revision petitioner/defendant admitted remaining handwriting in the promissory note except the alleged material alterations. Therefore, finding that defendant has not produced contemporaneous and admitted handwriting for comparison is apparently incorrect. When the pronote contains both admitted and disputed handwritings, there may not be any difficult for comparison. If the handwriting expert feels that some more handwriting of contemporaneous period is required, then the Court may direct revision petitioner/defendant to produce document that bear the handwriting of contemporaneous period. Therefore, the finding of Court below is not sustainable. The second ground on which the Court below refused to send document to an handwriting expert is that the application is filed at a belated stage, but as seen from order, after the evidence of DW.1 and when the matter was coming up for further evidence of defendant, this application is filed to send the document to hand writing expert. When the plaintiff completed his evidence, burden is on defendant to rebut the evidence that was produced on behalf of plaintiff and when defendant made a request to send document for comparison of

alleged material alterations, Court below ought to have given an opportunity, so that it would have helped the Court in appreciating evidence of both parties with regard to the plea of material alterations. No prejudice would be caused to the plaintiff if an opinion is called for from an expert as to the plea of material alterations of date portion and amount portion. Even the trial Court recorded that overwriting is visible to the naked-eye, but it is settled law that Court cannot act as an expert to appreciate the evidence. Here when both parties' advocates are seriously disputing plea and material alterations, Court ought to have considered request of defendant instead of recording a finding that writing on promissory note is clearly visible to a naked-eye. For these reasons, I am of the view that trial Court went wrong in dismissing application and ground on which relief is refused is not sustainable.

9. For these reasons, the impugned order dated 5th February, 2016 is set aside and I.A.No.2906 of 2015 in O.S.No.337 of 2013 on the file of Principal Senior Civil Judge, Kadapa is allowed and Court below is directed to send promissory note-Ex.A.1 to handwriting expert for comparison of writing both admitted and disputed in the very same document by giving opportunity to both parties to adduce further evidence after receipt of expert report.

10. Revision petition is accordingly allowed. There shall be no order as to costs.

As a sequel to disposal of this revision, Miscellaneous Petitions, if any, shall stand closed.

JUSTICE S.RAVI KUMAR

Dated 11-07-2016

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