

HON'BLE SRI JUSTICE R. KANTHA RAO

Civil Revision Petition No.515 of 2016

ORDER:

This civil revision petition is directed against the order dated 18.11.2015 passed by the Senior Civil Judge, Amalapuram in IA No.941 of 2015 in OS No.111 of 2013.

2. Heard Sri G.V.V.S.R.Subrahmanyam, learned counsel appearing for the petitioner and Sri T.V.S.Prabhakar Rao, learned counsel appearing for the respondent.

3. The revision petitioner is the defendant. The respondent /plaintiff filed the suit against the revision petitioner for recovery of amount due under a promissory note. In the course of trial, the revision petitioner filed a petition under Section 45 of the Indian Evidence Act, to send Ex.A.1 suit promissory note and other admitted signatures, like her signatures on suit summons, acknowledgement, vakalath, written statement and signatures obtained before the court, to the Hand-writing expert, for comparison and his opinion as to whether the signature on Ex.A.1 is true or not. The petition was opposed by the respondent on the ground that without submitting admitted signatures relating to the period much earlier to Ex.A.1 promissory note, the petitioner cannot seek comparison of the signature on the promissory note with the admitted signatures on the suit summons, written statement etc. It is further contended that the petition was filed to protract the trial of the suit.

4. The trial court expressed a view that the signatures of the defendant on suit summons, written statement, vakalat and acknowledgment are subsequent to Ex.A.1 promissory note and unless the admitted signatures relating to the period much prior to Ex.A.1 promissory note are produced, it would not be appropriate to

send the suit promissory note Ex.A.1 for comparison of the signature with those on the vakalath, written statement etc. to the Handwriting expert. The trial court specifically recorded a finding that the petitioner/defendant did not take any specific plea in the written statement that the suit promissory note is a rank forged one and therefore, he cannot ask the court to send the promissory note along with the admitted signatures for opinion of the expert. The trial court, however, recorded its finding without properly perusing the averments in the written statement. In the written statement, it is clearly stated that the signatures on the promissory note Ex.A.1 does not belong to the defendant and also the promissory note is a forged one. The trial court further expressed a view that the petition was filed only to protract the litigation and therefore, dismissed the petition. Feeling aggrieved, the defendant filed the present revision.

5. Now the point for determination in the present revision petition is whether the suit promissory note can be sent for comparison of the signature to the Handwriting Expert along with the admitted signatures on the vakalat, written statement, suit summons etc.?

6. The trial court took the view that even if there is a plea that the suit promissory note is a forged one, the defendant has to file a petition under Section 45 of the Evidence Act, soon after framing of the issues. But as a matter of fact, the party can make an application at any time during the course of trial and the court after exercising judicial discretion would either allow or dismiss the application, having regard to the facts and circumstances of each case. The crucial aspect, which requires to be considered, is that on mere asking by a party whether the document can be sent for the opinion of the expert or not. In the instant case, it is true that the defendant took a plea in the written statement that the signature on the promissory note is a forged one. Whenever such plea is taken, it is not obligatory on the party of the court to send the promissory note along with other documents required for comparison of the signatures of the defendant. In the usual course,

the burden is on the plaintiff to prove the execution of the promissory note by adducing evidence. If the plaintiff failed to adduce any evidence, he would loose his case. Further, under Section 73 of the Evidence Act, the court has power to compare the signatures and coupled with other evidence available on record and it can arrive at an opinion. The evidence of an expert is only an opinion evidence, which cannot be taken into consideration by the court without other convincing evidence relating to execution of the promissory note. In the instant case, in the opinion of this court, the trial court has rightly exercised its judicial discretion in not sending the suit promissory note for comparison of the signature of the petitioner along with other documents mentioned above, which are obviously subsequent to filing of the suit promissory note-Ex.A.1.

7. In the circumstances, I see no merit in the revision petition and accordingly, dismiss the same. No order as to costs. Miscellaneous petitions, pending if any in this revision, shall stand closed.

R. KANTHA RAO, J

Date: 18.03.2016
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