

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**CIVIL REVISION PETITION No.1439 OF 2013****ORDER:**

This Civil Revision Petition is filed against the order dated 20.02.2013 passed in I.A.No.109 of 2013 in O.S.No.117 of 2012 on the file of the Court of Principal Senior Civil Judge, Tenali.

The brief facts of the case according to the petitioner are as follows:

The petitioner herein is the defendant in the above said suit filed for recovery of the suit amount under the strength of the promissory note dated 11.06.2009. The petitioner contended that the said promissory note is a forged one and that she never borrowed any amount. Petitioner filed an application i.e, I.A.No.109 of 2013 under Section 45 of the Evidence Act, 1872 read with Section 151 of C.P.C to send the promissory note to an expert to compare the disputed signatures with her admitted signatures. The said I.A was dismissed on 20.02.2013. Aggrieved by the same, the present civil revision petition is filed.

Notice before admission was granted in the matter and interim stay was granted initially for a limited period and on 12.04.2013, interim stay granted earlier was extended until further orders.

The respondent herein is the plaintiff in the suit and filed his counter to the said I.A stating that it is not necessary to send the promissory note to hand writing expert to compare the signature and that the learned trial court can compare the same with naked eye. It was further stated that only to drag on the matter, the said application was filed.

Heard.

The learned trial Court dismissed the said I.A observing thus:

“The perusal of the record shows the defendants side evidence, she never pleaded in her written statement or never filed a petition along with written statement U/Sec.45 of Evidence Act to send the pronote to the expert. Her defence is plaintiff has no capacity and defendant has no necessity to borrow the amount and another contention is a plot was purchased under a sale deed executed by plaintiff and other site owners and plaintiff under took the work of additional furnishing i.e., flooring and other works, entire decorations in the flat for Rs.3,00,000/- that amount was paid alter he demanded another Rs.2,00,000/- stating that the said Rs.3,00,000/- is not sufficient for work done for which she refused. I feel that there are no grounds to permit the petitioner to send the documents to the expert and also this petition is filed at a belated stage. Hence, this petition is dismissed.”

Even though the defendant did not plead in her written statement and did not file a petition under Section 45 of the Evidence Act to send the promissory note to the hand writing expert she specifically pleaded in her written statement that the respondent plaintiff is a builder and that the petitioner's husband with her money purchased a flat in her name through a registered sale deed dated 23.07.2008. It was also stated that the respondent herein undertook the work of interiors for Rs.3,00,000/- and that the said amount was paid through the cheque. It is further stated that the respondent herein demanded payment of additional sum of Rs.3,00,000/- which the petitioner herein refused to pay and thereby dispute arose between them and that the respondent herein is acquainted with the signature of the petitioner herein. The signature on the promissory note is not the signature of the

petitioner herein. It is further stated that the petitioner does not have any necessity to borrow the said amount and by the date of the suit promissory got credit balance in her account and later on also she received considerable amounts from her son through the bank. It is specifically stated that the respondent brought into existence the promissory note by forging the signatures of the petitioner.

Learned counsel for the petitioner contended that the said application was filed immediately after the evidence of the respondent plaintiff was closed and before commencement of the evidence of the petitioner.

A perusal of the written statement clearly shows that the petitioner denied the signature on the promissory note even though she did not specifically ask to send the promissory note to an expert for comparison of the signature in her written statement. The petitioner herein is disputing the signature on the promissory note and no prejudice would be caused to the respondent herein if the promissory note is sent for comparison along with the admitted signatures to an hand writing expert. The application seeking the opinion of an expert can be filed at any stage of the proceedings.

Learned counsel for the petitioner relied upon a judgment reported in **Matta Sriramamurthy vs. Arepalli Srirama Murthy**¹ wherein it was held that before exercising the powers under Section 73 of the Indian Evidence Act, to form an opinion by comparing the hand writing or signature of a party, it would be always proper to take the assistance of the hand writing expert.

¹ 2015 (3) ALT 266

The Court would be in a better position to form an appropriate opinion if it is aided by the hand writing experts. The learned counsel for the petitioner also relied upon a judgment reported in **Janachaitanaya Housing Limited v. Divya Financiers²** and while answering a reference, this Court held as follows:

“No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the hand writing expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case.”

For the reasons stated above and as the learned counsel for the respondent also agreed to send the disputed document to an expert, the civil revision petition is allowed by setting aside the order dated 20.02.2013 passed by the learned Principal Senior Civil Judge, Tenali in I.A.No.109 of 2013 in O.S.No.117 of 2012. However, the learned trial Judge is directed to send the document in question to the hand writing expert for comparing with the admitted signatures. Further, as the suit is of the year 2012, the learned trial judge is hereby directed to dispose of the same as expeditiously as possible preferably within a period of six months from the date of receipt of copy of the order. No order as to costs.

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

KONGARA VIJAYA LAKSHMI,J

Date:27.10.2017.
Gk.

² 2008(3) ALT 409 (D.B.)

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