

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5809 OF 2016

ORDER:

This petition is filed under Section 227 of the Constitution of India challenging the order, dated 21.09.2016 in I.A.No.434 of 2016 in O.S.No.1802 of 2012 passed by VII Senior Civil Judge, City Civil Court, Hyderabad in dismissing the application filed under Section 45 of the Indian Evidence Act (for short 'the Act') on the ground that the application was filed belatedly.

The present revision is filed challenging the order mainly on the ground that the delay is not a ground to dismiss the petition, which was filed under Section 45 of the Act.

During hearing, notice was ordered to the respondent and served, but none appeared.

Sri K.Devender, learned counsel for the petitioner, contended that the delay is not a ground and drawn the attention to the judgment of this Court in C.R.P.No.4951 of 2016, dated 03.01.2017, wherein, this Court relied on two other judgments in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash and others¹** and **Janachaitanya Housing Ltd., v. Divya Financiers²** that the delay is not a ground to dismiss the petition.

The trial Court dismissed the petition only on the ground that it is at a belated stage as the matter was posted for cross-examination of D.W.1 and also filed the examination-in-chief of D.W.1 under Order 18 Rule 4 of CPC, and she did not take any steps earlier.

¹ 2016(2)ALD 1 (FB)

² 2008(4)ALD 339 (DB)

In view of the law declared by Full Bench of this Court, Division Bench and Single Bench referred supra, the delay is not a ground to dismiss the petition.

Section 45 of the Act deals with opinions of experts. In most of the matters, parties are filing petitions under Section 45 of the Act, which deals with relevancy of opinion evidence though there is a specific provision in CPC. Order 26 Rule 10-A of CPC permits the Court to appoint a Commission for scientific investigation, where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon, to the Court.

Referring the document for opinion of an expert is nothing but conducting a scientific investigation which can be done by experts only. In such a case, the petition shall be under Order 26 Rule 10-A of CPC. However, quoting of wrong provision is not a ground to deny the relief, if the petitioner is otherwise entitled. Therefore, this would not come in the way of granting relief.

In view of my foregoing discussion and following the principles referred to supra, the order of the trial Court dated 21.09.2016 in I.A.No.434 of 2016 in O.S.No.1802 of 2012 passed by VII Senior Civil Judge, City Civil Court, Hyderabad is hereby set aside and the Revision Petition is allowed directing the trial Court to refer the disputed signature on the disputed documents, Ex.A1-pronote, vakalat and written statement of the defendant

together with any specimen signatures obtained in Court to handwriting expert. There shall be no order as to costs.

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

M. SATYANARAYANA MURTHY, J

JUNE 22, 2017

ssp

