

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.92 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 07.12.2016 passed in I.A.No.913 of 2016 in O.S.No.1911 of 2010 on the file of the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad.

2. The contention of the learned counsel for the petitioner is two fold: (1) the trial Court misconstrued the testimonies of PWs.1 and 2 and dismissed the petition; and (2) even if disputed signature on Ex.A.1 was sent to expert for comparison with admitted signature of the petitioner, no prejudice will be caused to the respondent.

3. *Per contra*, the learned counsel for the respondent submitted that the petitioner having admitted his signature on Ex.A.1, is not entitled to file a petition under Section 45 of the Indian Evidence Act, 1872. He further submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

4. A perusal of the record reveals that the respondent herein filed O.S.No.1911 of 2010 on the file of the XVII Senior Civil Judge, City Civil Court, Hyderabad, against the petitioner for recovery of an amount of Rs.1,54,000/- basing on Ex.A.1 – promissory note, dated 22.06.2007. The petitioner filed the written statement taking a plea that Ex.A.1 does not bear his signature. After completion of the evidence on both sides, the petitioner herein filed I.A.No.913 of 2016 in O.S.No.1911 of 2010 to send Ex.A.1 to the

expert for comparison with admitted signature of the petitioner and the same was dismissed by the trial Court. Hence, the revision.

5. No doubt, the petitioner herein has taken a specific plea in the written statement that the respondent filed the suit taking advantage of availability of his signature on non-judicial stamp paper with his uncle. The petitioner put a suggestion to PW.2 that the respondent filed the suit taking advantage of signature of petitioner on Ex.A.1. It is the case of the petitioner that the uncle of the respondent had obtained his signature on non-judicial stamp paper. Ex.A.1 is prepared on non-judicial stamp paper. The petitioner is admitting that the uncle of the respondent had obtained his signature on non-judicial stamp paper and taking advantage of the same, the present suit is filed. In the cross-examination of PWs.1 and 2, nothing is elicited to establish that Ex.A.1 does not bear the signature of the petitioner. Under which circumstances, the petitioner was forced to sign on Ex.A.1 has to be explained by him by way of oral and documentary evidence. The petitioner filed the present petition under Sections 45 and 73 of the Indian Evidence Act. Section 73 of the Indian Evidence Act enables the Court to compare the disputed signature of the parties with admitted signature. It is needless to say that the opinion expressed by the expert is not a substantial piece of evidence.

6. At the time of arguments, the learned counsel for the respondent submitted that the trial Court posted the matter 'for judgment' on 14.02.2016. Mere posting of the matter 'for judgment' by itself is not a valid ground to dismiss the revision petition in *limini*. The Court has to see overall facts and circumstances of the case in order to send the disputed signature

on a document with the admitted signature of the party for comparison. As observed earlier, the petitioner himself is admitting his signature on Ex.A.1. In such circumstances, sending of the document to the expert would not serve any purpose much less to substantiate the stand of the petitioner. The trial Court rightly considered the scope of Section 45 of the Indian Evidence Act. The suit was filed in the year 2010, whereas the petitioner filed the present petition in the year 2016, which clearly manifest that the petitioner has taken six years time to file the present petition. The Court shall not lose sight of this aspect while considering the petition filed under Section 45 of the Indian Evidence Act. The trial Court has assigned reasons much less cogent and valid reasons while dismissing the petition. I am fully agreeing with the findings recorded by the trial Court in dismissing the petition. There is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court by exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the revision lacks merits and *bona fides*.

7. Accordingly, the Civil Revision Petition is dismissed. However, the observations made by this Court shall be confined to this revision petition only. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 07.02.2017
Ivd