

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.1504 OF 2017

DATED:02-06-2017

Between:

Dhatla Lakshmipathi Raju ... Petitioner

And

P. Venkata Ramana
and another ... Respondents

COUNSEL FOR THE PETITIONER: Mr. M. Ramalingeswara Reddy

COUNSEL FOR THE RESPONDENTS: Mr. S. Subba Reddy



THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition arises out of order dt.15.02.2017 in I.A. No.72 of 2017 in O.S. No.320 of 2010 on the file of the VI Additional District Judge, Visakhapatnam.

2. I have heard Mr. M. Ramalingeswara Reddy, learned counsel for the petitioner, and Mr. S. Subba Reddy, learned counsel for the respondents.

3. The petitioner has filed the aforementioned suit for specific performance of an agreement of sale - Ex.A.1, in the year 2010. Within a reasonable time thereafter, the respondents have filed a written statement wherein they have denied the execution of the agreement of sale by disputing the signatures. The parties went for the trial based on the respective pleadings and when the case was posted for arguments, the petitioner has filed the aforementioned I.A. under Order XXVI Rule 10 of the Code of Civil Procedure, 1908 to send Ex.A.1 and the written statement in original to an handwriting expert for comparison of the admitted signatures with the disputed signatures on Ex.A.1. This application was dismissed by the lower Court on the sole ground of inordinate delay in filing the application and especially at the stage of arguments.

4. The learned counsel for the petitioner submitted that as the defence evidence, wherein the genuineness of Ex.A.1 was questioned by the witnesses, was closed on 02.1.2017, within a reasonable time thereafter his client has filed I.A. No. 72 of 2017 and in that view of the matter no delay has occurred. Alternatively he has submitted that under Section 45 of the Indian Evidence Act, 1872 (for short, 'the Act'), the Court is vested with ample power to send the disputed document for

expert's opinion at any stage of the suit and that the Court below has not properly exercised the jurisdiction vested in it.

5. Opposing the above submissions, Mr. S. Subba Reddy, learned counsel for the respondents, stated that though the Court has discretion to send a document at any stage of the suit proceedings for an expert's opinion, on the facts of the case the Court below was not satisfied with the conduct of the respondents in remaining quiet for more than six years after the written statement was filed denying the signatures of the respondents on Ex.A.1 and that the Court below has rightly exercised its discretion against the petitioner. In support of his submission, he has placed reliance on the judgment of this Court in *S. Harshavardhan Reddy v. Vemula Ram Reddy*¹.

6. As regards the power of the Court to send a document for expert's opinion, a Division Bench of this Court in *Janachaitanya Housing Ltd. v. Divya Financiers, Guntur*² held that the Court cannot lay down any hard and fast rules controlling the discretion of the Court to send the disputed documents/writings for the opinion of the expert or to examine him in support of such opinion. This judgment does not come to the aid of the petitioner, as, in that case the lower Court has exercised the discretion in favour of the applicant for sending the document for expert's opinion and the plea of the adversary party that it was not permissible for the Court to send the document for expert's opinion after completion of trial was rejected. In the instant case, the Court below has exercised discretion against the petitioner by declining to send the suit document for expert's opinion on the ground of delay.

¹ 2014 (6) ALD 114

² 2008 (4) ALD 339 (DB)

7. In an identical case in *S. Harshavardhan Reddy* (1 supra) I have upheld the order similar to the one under revision wherein it was observed that the respondent denied receipt of a sum of Rs.15,00,000/- as far back as 12.2.2008 by filing a written statement and that the petitioner never made any attempt to get the disputed document referred to a handwriting expert till completion of the trial. It was further held that though delay may not be the sole factor in considering the application under Section 45 of the Act, on the facts of that case, the Court was of the opinion that the petitioner was completely negligent in pursuing his cause.

8. The reasoning assigned in *S. Harshavardhan Reddy* (1 supra) applies on all fours to the present case. Admittedly, the respondents have filed the written statement more than six years back denying execution of Ex.A.1. Having kept quiet for six years and allowed the trial to be completed, the petitioner has filed the application at the stage of arguments. I am unable to agree with the submission of the learned counsel for the petitioner that cause of action for his client to file the application for sending the suit document for expert's opinion arose only on closure of the defendants' evidence. With the denial of execution of Ex.A.1 in the written statement, cause of action had arisen for the petitioner to come out with an application for sending the suit document for expert's opinion. I cannot refrain from observing that it is the laid-back approach of the parties or their counsel in filing applications belatedly that has not only been causing prejudice to the interests of the parties, but also leading to abnormal delays in disposal of cases. Had the petitioner been diligent in filing an application immediately after filing of the written statement or at least before commencement of the trial, his interests would have been well-served. The Courts, facing severe

pressure of pendency of cases for long time, cannot be expected to allow applications of this nature thwarting their efforts to dispose of cases as quickly as possible. On the one hand the litigants are critical of abnormal delays in disposal of cases and on the other hand they file applications after applications in pending suits, some of them are wholly needless, at far too belated stages stalling the suit proceedings. This attitude of the parties as well as their counsel need to be changed and sooner it happens it is better for the litigant public.

9. In the light of the above discussion, I am of the opinion that the discretion exercised by the Court below in rejecting the application of the petitioner cannot be said to be either irrational or improper warranting interference of this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. The civil revision petition is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P. No.1988 of 2017 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

02-06-2017

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Note: LR Copies to be marked.

(B.O)

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