

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.4959 of 2017

ORDER:

1) Assailing the order dated 08.08.2017 passed in I.A.No.842 of 2016 in O.S.No.119 of 2016 on the file of the Junior Civil Judge, Prathipadu, wherein an application filed under Section 45 of the Evidence Act to send the signature on the suit promissory note to handwriting expert along with specimen and admitted signatures of petitioner was dismissed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) A perusal of the impugned order would show that O.S.No.119 of 2016 came to be filed by the respondent/ plaintiff seeking recovery of Rs.1,35,000/- basing on the suit promissory note dated 25.01.2014. Pending trial, the petitioner/ defendant filed I.A.No.842 of 2016 to send the signature on the suit promissory note to the handwriting expert along with specimen and admitted signatures of the petitioner herein. The plea of the petitioner appears to be that he never borrowed an amount of Rs.1,35,000/- and the signature on the promissory note was a rank forgery. No counter is filed by the plaintiff.

3) While dismissing the said application, the trial Court held that as per Section 73 of the Evidence Act, the Court is having ample power to compare the signatures with the disputed signatures including the signatures available on record. It was

further held that there is every possibility of defendant signing his signature on different manner in vakalath and written statement and hence opined that there is no point in sending the document to an expert. Challenging the same, the present Civil Revision Petitions are filed.

4) Learned counsel for the petitioner would submit that great prejudice would be caused to the petitioner, if the said signature is not sent to the handwriting expert. According to her, the finding of the trial Court that the signatures on the vakalat and written statement came to be made intentionally in a different manner is incorrect.

5) Relying upon various decisions of the Supreme Court, this Court in *Velaga Sivarama Krishna v. Velaga Veerabhadra Rao*¹, held as under:

“Whenever a party disputes the signature on a particular document, two remedies are open to him, either to request the Court to compare the signatures or to file an application to send the document to the expert for comparison. When the petitioner opted to file an application to send the document to the handwriting expert, no prejudice will be caused to either party. When he is asserting that the signature is that of the said party, even though there is a gap between the disputed signatures and admitted signatures, a science has been developed to compare such signatures also by taking into consideration the direction of the strokes, the speed of writing, the pattern of writing etc., therefore, it cannot be said

¹ (2009) 1 ALT 379

that no useful purpose will be served by sending the document to the expert. After comparison, if the similarities of the disputed signature and the admitted signatures are very negligence, then the Court can formulate its opinion with the assistance of the expert's report and by comparing the signatures whether the report has to be accepted or not. But, if the opportunity is denied to the defendant and if the matter is carried to the appellate Court, there is every likelihood of commenting that he did not avail the opportunity of filing an application for sending the document for handwriting expert's opinion, if he is so sure that the disputed signature does not belong to him.

In view of the circumstances, I am of the view that it is essential to send the document to the expert for comparison at the request of the party in the interest of justice, which cannot cause any amount of prejudice to the plaintiffs in the present suit, therefore, the order of the lower Court is liable to be *set aside*."

6) Admittedly, the suit is filed for recovery of money basing on Ex.A1-suit promissory note. In the written statement itself, the defendant denied his signature on the said pronote. The promissory note in which the defendant is alleged to have been signed was of the year 2014 and the suit came to be filed in the year 2016. The documents which are now sought to be send along with the disputes signature are vakalath and written statement. When this Court expressed that the petitioner/ defendant must have intentionally changed his signature after execution of suit document, the petitioner stated that the admitted signatures of

the year 2014 will be furnished to the trial Court, in which event the trial Court may be directed to send the disputed document to the expert.

7) Having regard to the above, the Civil Revision Petition is disposed of, permitting the petitioner to file a fresh application along with the admitted signatures of the year 2014 ie., period during which the promissory note came to be executed by the defendant, in which event the trial Court shall dispose of the same, in accordance with law.

8) There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

15.12.2017
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