

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.4145 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner/defendant is directed against the order, dated 02.08.2017, of the learned Senior Civil Judge, Wanaparthi, passed in I.A.No.411 of 2015 in O.S.No.13 of 2010.

2. I have heard the submissions of Sri G.Purushotham Reddy, learned counsel for the revision petitioner/4th defendant (hereinafter, '4th defendant', for brevity), and of Sri V.Hanumanth Rao, learned counsel for the 1st respondent/ plaintiff (hereinafter, 'the plaintiff', for brevity).

3. At the outset, it is to be noted that the plaintiff brought the suit against the 4th defendant and others for recovery of a principal sum of Rs.1,90,000/- with interest and costs on the foot of a promissory note, dated 12.08.2008. The defendants are resisting the said suit. While so, the 4th defendant filed the afore-stated interlocutory application under Section 45 of the Indian Evidence Act, 1872, requesting to send the suit promissory note to an Expert for deciding the ages of the inks of the disputed writings in the suit promissory note. The said petition was resisted by the plaintiff by filing a counter. On merits and by the orders impugned in this revision, the trial Court dismissed the said petition. Aggrieved thereof, the 4th defendant is before this court.

4. The case of the 4th defendant in support of the present request, in brief, is this: 'The suit is filed for recovery of money on the foot of a promissory note. The 4th defendant and, one Ramu, the husband of

the 1st defendant were members of the chit maintained by one G.Ramesh. He used to lend amounts to different persons; but, on huge interest rates. He used to run private chits without licence or permit. The 4th defendant and the said J.Ramu, at the time of receiving the chit amount, at the instance of the said G.Ramesh, gave blank promissory notes to him. In the promissory note of J.Ramu, this 4th defendant signed as guarantor and in the promissory note of the 4th defendant, the deceased J.Ramu signed as guarantor. In fact, no consideration passed under the said promissory notes. Due to differences with regard to the payment of penalty on account of late payment of the chit amount, the said G.Ramesh took advantage of the blank promissory notes available with him and got filed the present suit with false allegations. The writings in the guarantor column were written long time back. The other columns in the promissory note were filled just prior to the filing of the suit. As such, there is much time gap between the two writings available on the promissory notes. According to the plaintiff, all the writings on the promissory note were written at one point of time i.e., on the day the promissory note was executed; but, on the alleged date mentioned on the promissory note, no transaction has taken place. The 4th defendant is not concerned with the alleged transaction. To prove the said facts and the defence of the 4th defendant, it is necessary to send the suit promissory note to an expert to ascertain the ages of the inks of various writings on the suit promissory note. That is the only way by which the 4th defendant can establish his defence. If the said request is not considered, this defendant suffers serious and irreparable loss. Earlier, the trial court by order, dated 15.02.2014, allowed the petition of this defendant and sent the suit promissory note to Forensic Science Laboratory,

Hyderabad, which is a Government Forensic Science Laboratory. The officers/experts of the said organization are usually reluctant to accept private documents for examination and furnishing an opinion; and, as such, they arrived at an opinion that the request for assessing the ages of the inks is untenable and returned the document to the Court with the said opinion. The said opinion is a rank lie. It shows complacency on their part. The science on the said aspect has developed to a greater magnitude. There are experts well equipped; and, there are sophisticated devices to arrive at a definite opinion as to the age of the ink of any writing. As such, the present petition is filed to send the suit promissory note to any of the private agencies such as Truth Lab or the Lab of Ashok Kashyap Brothers or any other such Lab at any place for obtaining opinion as to the ages of the inks of the writings on the suit promissory note.'

5. The case of the plaintiff, in brief, is this:

The promissory note columns were filled by the deceased borrower-J.Ramu and the surety columns were filled by the 4th defendant. The plaintiff is examined as PW1 and in the deposition he stated that the suit promissory note and receipt columns were filled by the deceased J.Ramu and surety columns were filled by the 4th defendant. PW 2 was also examined. He also corroborated the version of PW1. The allegations that the blank promissory note was signed by the principal debtor and guarantor and that the writings in the promissory note were written at different points of time as alleged by the 4th defendant are false. The evidence of the plaintiff was closed, on 15.02.2012. Since last more than four years, the defendants are dragging on this simple money suit. This 4th defendant filed an

interlocutory application for recalling PW1. The trial court liberally allowed the petition on payment of costs of Rs.100/-. The 4th defendant successfully obtained 21 adjournments. After imposition of heavy costs only PW1 was further cross-examined. Even arguments were advanced on the side of the plaintiff. As no submissions were made on behalf of the 4th defendant, the trial court posted the suit for judgment to 30.01.2014. The defendant filed I.A.No.196 of 2014 for reopening the case for advancing arguments. Surprisingly, the 4th defendant filed the present petition. Already a Government Forensic Science Expert having examined the suit document gave an opinion that the age of the ink is not assessable. The said opinion is on record of the court. After receiving such opinion the matter is posted for arguments. Now again the present petition is filed to send the document to a private expert. Hence, the petition is liable to be dismissed.

6. Learned counsel for the 4th defendant further submitted as follows: 'The opinion of the Government expert that the age of the ink of writing is not assessable is an untenable opinion in view of the advancement of science and technology. Private experts are having the necessary expertise and private labs are having the required equipment; and, with the said equipment private experts can assess the age of the ink used for any writing. Hence, the present request is being made to send the suit promissory note to a private expert at any place for assessing the ages of the inks of the writings on the suit promissory note.

7. The learned counsel for the plaintiff while pointing out the dilatory tactics being adopted by the defendants submitted that the

opinion of a Government expert already on record is sufficient to reject the present request of the 4th defendant and *inter alia* stated that opinions of private experts are unreliable. He would further submit that as the contents of the suit promissory notes were filled by the deceased J.Ramu and the contents of the surety columns were filled by the 4th defendant, no useful purpose would be served by seeking any opinion as being sought for by the 4th defendant in this matter.

8. Learned counsel for the 4th defendant having relied upon Madras High Court decision in *Elumalai vs. Subbaramani*¹ contended that Forensic science and technology are by now very well developed and that the science and technology in the matter of determination of age of ink has made advancement by leaps and bounds and that in view of the said advancement in the said fields and the new equipment now available with the experts, it is possible to determine or assess the age of the ink of any writing on any instrument and, therefore, the opinion given by the Government expert of State Forensic Science Laboratory that the age of the ink is not assessable, is incorrect.

9. However, learned counsel for the plaintiff placed reliance on a decision of this Court in *Kambala Nageswra Rao v. Kesana Balakrishna*², wherein this Court noted as follows;

“Even while not disputing his signature on the promissory note, the petitioner wanted the age of the ink thereof to be determined. Several complications arise in this regard. The mere determination of the age, even if there exists any facility for that purpose; cannot, by itself, determine the age of the signature. In a given case, the ink, or

¹ 2011 LawSuit (Mad) 874

² AIR 2014 AP 37

for that matter, the pen, may have been manufactured several years ago, before it was used, to put a signature. If there was a gap of 10 years between the date of manufacture of ink or pen, and the date on which, the signature was put or document was written, the document cannot be said to have been executed or signed on the date of manufacture of ink or pen. It is only in certain forensic cases, that such questions may become relevant. The trial Court has taken correct view of the matter and dismissed the application.”

10. No doubt, a perusal of the decision of the Madras High Court would show that the learned Judges of the Madras High Court after considering various aspects came to a conclusion that the scientific advancements made and modern technologies available would make it possible to find out the age of the ink of a writing/signature in a document.

11. In the case on hand, the signatures on the suit promissory note of both the principal debtor as well as the guarantor are admitted. The 4th defendant contends that some part of the document was written at a time when the signatures were made and that the other part of the document was filled up just before the filing of the suit and that, therefore, the entire content of the promissory note is not written at one point of time and that if the document is sent to an expert for determining the ages of the inks used for writing the different contents on the promissory note and furnishing an opinion in that regard, it would be clear that some part of the promissory note was written much earlier to the filing of the suit and that some other part of the promissory note was written just before the filing of the suit. However, the plaintiff contends that he had already deposed in his

cross-examination that the promissory note and receipt column were filled in by the deceased J.Ramu and that the surety columns were filled in by the 4th defendant and that the signatures of the principal debtor and guarantor of the promissory note are also admitted and that in that view of the matter, there is no need to send the document to an expert, more particularly, in view of the opinion already furnished by the Government expert of the State Forensic Laboratory that the age of the ink of a writing on the instrument is not assessable. Further, the learned counsel for the plaintiff, while pointing out the chronological events from 15.02.2012, on which date, the plaintiff's side evidence is closed, would contend that the 4th defendant is dragging on the matter on one pretext or the other and that the petition filed at a stage when the suit is once posted for the arguments is liable to be dismissed.

12. Section 45 of the Indian Evidence Act, 1872, reads as under:

“45. Opinions of experts - When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.”

13. Section 75 of CPC also provides that the court may issue commission to hold a scientific, technical or expert investigation subject, however, to such conditions and limitations that are prescribed. Further, Order XXVI Rule 10A of the Code reads as follows:

“Order XXVI, Rule 10A: Commission for scientific investigation:

(1) 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.

(2) The provisions of rule 10 of the Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.”

14. Before proceeding further in the matter, it is necessary to note the ratio in the decision in *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu* (died) per L.Rs and others³, where in a Full Bench of this Court held as follows:

“It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwritings/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in *Janachaitanya Housing Limited v. Divya Financiers* [(2008)3 ALT 409 (D.B)], as to the stage of the proceedings when an application can be moved by a

³ 2016(2) ALT 248(F.B)

party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue.”

In *Janchaitanya Housing Ltd., Hyderabad v. Divya Financiers, Guntur*⁴; the question that was considered was – ‘whether the application under Section 45 of the Indian Evidence Act filed for sending signatures for comparison and expert opinion, can be entertained at a later stage, including a stage when the suit is coming up for arguments after entire trial?’ Having referred to the earlier decisions, this Court, while answering the reference had held that no time can be fixed for filing application under Section 45 of the Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and that the said matter 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 each case.

15. Reverting to the facts of the case, it is to be noted that the suit is filed for recovery of a principal sum of Rs.1,90,000/- with interest thereon. J.Ramu, who is the principal debtor, is no more. He and the 4th defendant signed on the suit promissory note is not in dispute. The evidence was already recorded and the suit is at the stage of hearing arguments after it is once reopened after being posted for judgment. Already a Government examiner of questioned documents of State Forensic Science Laboratory furnished an opinion that the age of the ink of the writings on the suit promissory note is not assessable and that opinion is on record. Even according to the version of the plaintiff, some portion of the document was written by deceased

⁴ 2008(4) ALD 339 (DB)

J.Ramu and the other portion was written by the 4th defendant. Now the 4th defendant wants the suit promissory note to be sent to a private Forensic Science Laboratory for obtaining an opinion of a private expert as to the ages of the inks of the writings on the suit promissory note.

16. The law is well settled that expert's evidence as to hand writings or signatures is opinion evidence and it can rarely take the place of substantive evidence. No information is elicited from PWs.1 and 2 as to whether the contents of the promissory note were written with the same pen or different pens by the deceased J.Ramu and the 4th defendant. Further, mere determination of the ages of the inks of the writings on the suit promissory note even there exists any science or technology for that purpose would be of no avail to the 4th defendant in the facts and circumstances of the case and in view of the aforestated reason. In such circumstances, the determination of the ages of the inks of the writings on the suit promissory note even if possible would serve no useful purpose.

17. Having regard to the facts peculiar to the case and considering the monetary value involved in the suit and also the further fact that the suit is of the year 2010, this Court considers that the present case is not a fit case to grant the request of the 4th defendant. On the above analysis, this Court holds that the order impugned does not warrant interference.

18. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions if any shall stand closed.

JUSTICE M. SEETHARAMA MURTI

20th November, 2017

Note: Issue CC by 28.11.2017.

[B/o]

LMV

