

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4951 of 2016

ORDER :

Aggrieved by the impugned docket order dated 08.01.2016 in I.A.no.129 of 2015 in O.S.No.3 of 2010 on the file of the Junior Civil Judge, Thungathurthy, in dismissing the application to send the documents to forensic lab to test the age of ink and writing, this revision is maintained by the unsuccessful defendant.

2. The contentions in the grounds of revision vis-à-vis the oral submissions of learned counsel for the revision petitioner/defendant are that the lower Court gravely erred in dismissing the application by relying upon AIR 2014 AP 37, while saying there is a facility to determine the age of ink and writing, however that itself will not determine the age of the signature in any ultimate analysis, which observation if any premature to arrive, but for depending upon the opinion contemplated under Section 45 of the Indian Evidence Act, 1872, supported by reasons to be given for it as per Section 51 of the Act and from evidence of expert, for each case depends upon own facts and there is no set principle of expert opinion relating to age of ink or signature cannot be acted upon, much less any general principle laid down in any expression to that extent and thereby the said observation is unsustainable and the impugned order is liable to be set aside and the documents are to be sent to the expert.

3. Whereas it is the submission of learned counsel for the respondent/plaintiff that the impugned order of the lower Court order

is holding good and for this court while sitting in appeal there is nothing to interfere and practically no purpose will be served from expert opinion of age of ink and writing, even opinion cannot be given the basis to any conclusion and thereby the revision is liable to be dismissed.

4. Heard.

5. Perused the material on record.

6. The Full Bench expression of this Court in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash and others**¹, reiterating the principle laid down in **Janachaitanya Housing Ltd. V. Divya Financiers**², among other expressions observed in answering a reference that no time can be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the hand writing expert for comparison and opinion, but for left open to the discretion of Court depending upon the exigencies and from the facts and circumstances so demand, if any and so far as the determination of age of the writing or ink or signature that is permissible including from any lack of contemporary period signatures for same not a sole factor to reject the request.

7. Having regard to the above, once it is permissible in law, the documents can be sent to the expert. Needless to say, depending upon the experts opinion capable of giving, if any, from the documents on hand in question of determining the age and ink supported by any

¹ 2016 (2) ALD 1 (FB)

² 2008 (4) ALD 339 (DB)

reasons for it and the evidence of expert there from tested by cross-examination how far the same can be relied either as substantive evidence or as a corroborative piece for same is an opinion evidence left open for appreciation including with reference to any principle laid down in the expression referred by the lower Court of AIR 2014 AP 37 and without prejudice to such conclusion to be arrived in appreciation of evidence, the order of the lower Court is liable to be set aside.

8. Accordingly and in the result, the revision is allowed directing the lower Court to send the documents in question to the handwriting expert to determine the age of writings and ink and give opinions supported by reasons and for that purpose the revision petitioner/defendant shall deposit an amount of Rs.10,000/- (Rupees ten thousand only) before the lower Court within one week from the date of receipt of this order and the lower Court therefrom on hearing both sides, as to what documents to be sent for such determination, send with necessary fees to be meted out of the amount to get opinion early and to determine therefrom the lis.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

3rd January 2017.

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