

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5415 of 2016

ORDER:

1) Assailing the order, dated 22.10.2016, passed in I.A.No.313 of 2016 in O.S.No.49 of 2012 on the file of the IV Additional District Judge, Tirupati, wherein the application filed under Section 45 of the Indian Evidence Act to send the disputed Ex.A1 to handwriting expert, was dismissed, the petitioner, who is defendant, filed the present Civil Revision Petition under Article 227 of the Constitution of India.

2) The petitioner is the defendant and respondent is plaintiff before the trial Court. For the sake of convenience, the parties hereinafter be referred to as arrayed in the suit.

3) The facts in issue are as under:

The plaintiff filed the above suit for recovery of money of Rs.11,78,400/- with interest @ 24% p.a. basing on a suit promissory note, dated 05.11.2008. A written statement came to be filed by the defendant. In the said suit, after closure of the evidence of plaintiff, the defendant examined himself as DW.1 and another witness as DW.2. At that stage, the defendant filed I.A.No.313 of 2016 to send Ex.A1 promissory note to the Hand Writing Expert for comparison of

the disputed signature on Ex.A1 with admitted signatures, on the ground that suit promissory note was forged by the plaintiff with the help of the attestors and scribe.

4) The plaintiff filed counter contending that the defendant failed to file any document containing his signature of the year 2008 and as such the defendant is not entitled to send the document to a handwriting expert for comparison.

5) After considering the rival arguments advanced, the trial Court dismissed the petition. Challenging the same, the present Civil Revision Petition is filed.

6) Learned counsel for the petitioner would submit that in the written statement itself the defendant has stated that the suit document is forged and fabricated and the present petition is filed during the course of his evidence and as such there is no delay in filing the petition. He further submits that expert's opinion cannot be excluded from the purview of examination and that it would help the Court in exercising the power of comparison under Section 73 of the Evidence Act.

7) In spite of service of notice, there is no representation on behalf of the respondent/ plaintiff.

8) In the instant case, admittedly the plaintiff's evidence was completed and defendant himself examined as DW.1 and got examined one witness as DW.2. At that stage the present petition is filed to send Ex.A1 to a hand writing expert for comparison of disputed signature therein alleging that endorsement in Ex.A1 is a forged and fabricated one.

9) 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 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

¹ (2009) 1 ALT 379

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*."

10) 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. During the course of his evidence, he filed the present petition to send the disputed document to hand writing expert for comparison. Since the entire case rests on the disputed document, the Court below ought not to have rejected the application filed by the petitioner to send the same to a handwriting expert for comparison.

11) In view of the judgment referred to above; as recording of evidence is still going on and having regard to the facts and circumstances of the case, the Civil Revision Petition is allowed and the order dated 22.10.2016, passed in I.A.No.313 of 2016 in O.S.No.49 of 2012 on the file of the IV Additional District Judge, Tirupati, is *set aside* and the said I.A. is allowed.

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

21.03.2017
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JUSTICE C. PRAVEEN KUMAR