

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.130 OF 2016

ORDER:

This Civil Revision Petition is filed by the petitioner under Article 227 of the Constitution of India challenging the order, dated 24-11-2015 passed in I.A.No.324 of 2015 in O.S.No.1532 of 2014 by the IX Addl. Senior Civil Judge, L.B. Nagar, Ranga Reddy District.

2. Petitioner herein is the defendant, whereas the respondent herein is the plaintiff in O.S.No.1532 of 2014, which was filed for recovery of money on the foot of a promissory note.

3. Pending suit, the petitioner herein filed the above interlocutory application under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act') to refer Ex.A1-promissory note, dated 17-09-2011, to handwriting expert, Telangana State Forensic Science Laboratory, for comparison of his admitted handwriting with disputed signature on Ex.P1 and to ascertain whether the word 'Laksha' and number '1' is inserted with different ink on it. The said application was dismissed. Hence, this revision.

4. It is the contention of the learned counsel for the petitioner herein that the petitioner denied the execution of the promissory note and also borrowing of amount on 17-09-2011. He further contended that the promissory note does not disclose the father's name of the petitioner and the promissory note was tampered and created by the plaintiff only for the purpose of filing the suit with an intention to harass the defendant and to extract some amount from him. The said so-called promissory note was written in different writings and in different pens and further the scribe name was not written in the said promissory note and the alleged 1st witness is close

associate of plaintiff. Both are colluded with each other and got created the promissory note by forging the signature of the defendant. Taking advantage of this contention, the petitioner requested the Court to refer the disputed signature on Ex.A1 to the Director, Telangana Forensic Science Laboratory, for comparison with admitted signatures and opinion as to the genuineness of the signature and as to the interpolations in Ex.A1.

5. Learned counsel for the respondent contended that the trial Court dismissed the application on the ground that no admitted contemporaneous signatures of the petitioner are available, by placing reliance on the judgment of this Court reported in **M.NARSI REDDY V RAGHU RAM NAIDU AND ANOTHER**¹. He further contended that it is observed by the trial Court in the impugned order that the petitioner himself admitted in the cross-examination the signature appearing on Ex.A1 is that of him by denying the other part of the writing in Ex.A1.

6. The present revision is filed challenging the impugned order on various grounds mainly on the ground that the interpolations in Ex.A1 are appearing to the naked eye and opinion evidence of the expert is the only evidence to disprove the signature of the petitioner on Ex.A1 and therefore, denial of opportunity to disprove the signature on Ex.A1 amounts to denial of justice.

7. It is further contended by the learned counsel for the petitioner that the petitioner can produce the documents containing the contemporaneous signatures, after passing the order, but the trial Court did not consider the same in a proper perspective and prayed to allow the revision setting aside the impugned order passed by the trial Court.

¹ 2015 (3) ALD 234

8. The learned counsel appearing for the respondent while challenging the impugned order drawn attention of this Court to the deposition of D.W.1, wherein he made a categorical admission about signing of the document Ex.A1 and that no contemporaneous signatures of the petitioner on any documents are available for comparison and opinion and in such a case, the Court cannot exercise the powers under Section 45 of the Act to refer the promissory note for comparison of disputed signature with the contemporaneous admitted signatures and prayed to dismiss the revision.

9. The above interlocutory application was filed under Section 45 of the Act, which deals with relevancy of opinion of Experts. According to Section 45 of the Act when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting (or finger impressions), the opinions upon that point of persons specially skilled in such foreign law, science or art, (or in questions as to identify of handwriting) (or finger impressions) are relevant facts. Such persons are called experts. Therefore, the principle contained under Section 45 of the Act is only regarding relevancy and deals with relevancy of such opinion.

10. It become order of the day to file applications under Section 45 of the Act, though it deals with different situation about the relevancy of expert's opinion. But the Courts are passing orders on such applications by allowing the applications at some times and dismissing the application at some times. The only provision available in the Code of Civil Procedure, 1908 (for short 'CPC') is Order XXVI Rule 10-A CPC, which deals with appointment of a commission for scientific investigation. According to clause (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 enquire into such question and report thereon to the Court. Therefore, a Commissioner can be appointed for the purpose of scientific investigation. In the case on hand, the work to be undertaken by the expert is only in the nature of scientific investigation as it would fall within the ambit of Order XXVI Rule 10-A CPC.

11. No doubt, the petition cannot be dismissed on the ground of quoting of wrong provision of law or mis-quoting of provision of law if the petitioner is otherwise entitled to the relief claimed in the petition. The trial Court dismissed the application on the ground that no admitted contemporaneous signatures of the petitioner are available for comparison by the expert and to give opinion as to the signature on Ex.A1.

12. It is contended by the learned counsel for the petitioner that the petitioner can produce the documents containing the admitted contemporaneous signatures subsequent to passing of the impugned order.

13. Learned counsel for the respondent relied on the decision in **NARSI REDDY'S** case (1 supra), wherein it was held thus:

“As respondent No.1 objected to the petitioner’s request and in the absence of availability of admitted contemporaneous signatures, the lower Court has rightly rejected the petitioner’s request. Therefore, there is no illegality or jurisdictional error in the order of the lower Court for interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.”

In view of the principle laid down in the above judgment and in the absence of any authenticated document containing the admitted contemporaneous signatures of the petitioner, sending the disputed signatures to the expert for comparison and opinion would not serve any purpose. Therefore, on that

ground the trial Court dismissed the application and the same cannot be found fault.

14. The petitioner himself admitted in his cross-examination that the signature on Ex.A1 is that of him and when such evidentiary admission is made in the cross-examination, it is binding on him subject to explaining under what circumstances such admission is made. But, so far no such explanation was given.

15. The other contention of the learned counsel for the petitioner is that there are certain interpolations in Ex.A1 i.e., the word ‘ ‘ before “ “ and the figure ‘1’ before “80,000-00” and with different ink i.e., interpolations can be found with a naked eye and the Court can examine the document and record its findings subject to raising plea of material alternations in the written statement. But the Court cannot order for examination of the disputed signatures with the admitted signatures on vakalat and written statement, which are not contemporaneous. Therefore, I find no grounds to interfere with the order impugned, by exercising the jurisdiction under Article 227 of the Constitution of India and consequently, the revision is liable to be dismissed.

16. Accordingly, the Civil Revision Petition is dismissed. However, it is left open to the petitioner to raise any legal pleas before the trial Court and on such pleas, the trial Court is directed to dispose of the matter in accordance with law. No order as to costs. Miscellaneous petitions, if any pending, in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

DATED: 28-06-2017.

Hsd