

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.3357 and 3490 of 2011

COMMON ORDER:

These Civil Revision Petitions are filed by the petitioner/defendant under Article 227 of Constitution of India, challenging the common order, dated 15-07-2011 passed in I.A.Nos.505 and 506 of 2011 in O.S.No.372 of 2007 by the II Additional Senior Civil Judge, Warangal, whereby the petitions filed to reopen the case by setting aside the order, dated 25-02-2011 and to call for the original specimen signature of the petitioner/defendant from State Bank of India, Khajipet Branch (Old S.B.H. – amalgamation) as the Forensic Science Laboratory wanted contemporaneous signatures of the defendants, are dismissed.

Interlocutory applications are filed by the petitioner/defendant explaining the reason for failure to take steps and the specific reason assigned by the petitioner is that due to Telangana agitation the matter was came up on the particular days, when Bandh Call was given. Consequently admitted signatures could not be obtained and forwarded to A.P. Forensic Science Laboratories and the trial Court closed his evidence and posted the matter for arguments. The respondent opposed the petitions by filing counters mainly contending that if on account of agitation on one or two

occasions when bundh call is given the petitioner ought to have attended the Court, though, the Advocates are not attending the Courts, the docket orders speak about the same, therefore, there are no merits and prayed for dismissal.

The trial Court dismissed the petitions by common order, dated 15-07-2011 on the ground that summoning documents from the Bank is at belated stage, sending them to handwriting expert and getting opinion of the expert would take a lot of time. As the petitioner was not cautious in prosecuting the proceedings he is not entitled to claim any relief in the petitions and dismissed the two petitions by common order referred supra.

Aggrieved by the order in two petitions, the present revisions are filed under Article 227 of Constitution of India raising several grounds more particularly contending that there were no latches on the part of the petitioner and that the delay in filing petition itself it not a ground to dismiss the petition and prayed to set aside the orders passed by the Court below and allow both the revisions.

Notice was ordered to the respondent and served but none appear for the respondent.

It is a fact that the Advocates abstained from attending the Courts in entire state of Telangana on account of

Telangana agitation and some staff members were also abstained from attending Courts and that apart there was bandh call on various occasions within the Districts in Telangana area, in such case it is difficult for the petitioner to appear before the trial Court in person without the assistance of the counsel, who abstained from attending duties, therefore, the cause shown by the petitioner is sufficient cause.

The other contention of the petitioner is that when a plea was raised and the petition was filed under Section 45 of the Indian Evidence Act, it was allowed but for want of contemporaneous admitted signatures of the defendant the A.P. Forensic Science Laboratory could not complete the examination and issued opinion and only on the query of A.P. Forensic Science Laboratory the petitioner was compelled to file an application to summon the documents under Order XVI Rule 12 of Code of Civil Procedure from the State Bank of India, Khajipet so as to enable the Handwriting Expert to give opinion, comparing the contemporaneous signatures of the defendant with that of the disputed signatures on the document that too when a plea was raised about the forgery of the promissory-note and sought opinion of an expert from A.P. Forensic Science Laboratory the Court has to summon the documents from the concerned bank and

in similar circumstances in case of **D. Venkatadri Naidu v. S. Srinivasulu Reddy**¹, this Court held in paragraph No.3 as follows:

“... .. However, it is not in dispute that a plea has been taken in the written statement about the forgery of the promissory note and the petitioner also disputed the execution of the promissory note. If that be so, the only defence that is available to the petitioner is to rebut the normal presumption available in favour of the respondent/plaintiff with regard to the execution of the promissory note.”

Here the principle laid down is not directly applicable. However, the only ground to dispute the signatures on the promissory note is forged and the only source open to the petitioner is to refer the matter to the handwriting expert calling for opinion on comparison of disputed signatures on promissory note with contemporaneous admitted signatures of the defendant on the authenticated document, if any. Therefore, the petitioner took steps to summon the document. In such circumstances, the Court ought to have summoned the documents from the State Bank of India, Khajipet so as to enable the expert to give opinion as to the disputed document comparing with admitted documents otherwise it would

¹ 2008 (5) ALT 55

amount to denial of an opportunity and apart from that the dismissal of petition on the ground of delay is not legal.

Accordingly, the Civil Revision Petitions are allowed setting aside the common order, dated 15-07-2011 passed in I.A.Nos.505 and 506 of 2011 in O.S.No.372 of 2007 by the II Additional Senior Civil Judge, Warangal. There shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

June 30, 2017

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