

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.745 OF 2017

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 18.01.2017 in I.A.No.654 of 2016 in O.S.No.241 of 2015, passed by the Principal Senior Civil Judge, Ananthapuramu, dismissing the petition filed under Section 45 of Evidence Act and also under Section 26 Rule 10 C.P.C refusing to refer the disputed signatures of Ex.A-1 i.e Promissory Note along with specimen signatures obtained in the Court to the expert for his opinion and comparison, on the ground that this Court can exercise such power under Section 73 of Evidence Act and also no contemporaneous signatures of the defendant are also available for comparison by expert to give his opinion.

The petitioner is the defendant before the Trial Court and his contention is that his signature on Ex.A-1 was forged and thereby he is not liable to pay debt due under the promissory note Ex.A-1. In such case, the initial onus of proof is on the plaintiff to prove that it was executed, and thereafter, onus of proof will shift to the petitioner/defendant. But, one of the best modes of proof is to send the document to handwriting expert, though it is not conclusive evidence, it is relevant piece of evidence under Section 45 of Indian Evidence Act and it would be helpful for the Court to decide the real controversy between the parties. Therefore, the defendant

filed the petition for comparison of admitted signatures with disputed signatures by the expert for his opinion.

The main contention of the learned counsel for the petitioner is that, dismissal of an application on the ground that this Court can exercise power under Section 73 is erroneous and apart from that, denial of relief on the ground that no contemporaneous signatures are available is a serious illegality in the order passed by the Trial Court.

Learned counsel for the respondent argued totally in support of the order under challenge, while requesting this Court to direct the petitioner to produce authenticated documents containing contemporaneous signatures of the petitioner.

Undisputedly, the petitioner herein denied the very execution of Ex.A-1 while contending that the signature of the petitioner was forged on Ex.A-1. In such case, resorting to the procedure under Order XXVI Rule 10-A C.P.C to appoint an Advocate Commissioner for scientific investigation, if the Court thinks fit that it is useful to decide the real controversy between the parties, the Court may appoint an Advocate Commissioner for such scientific investigation and comparison of signatures by the expert is nothing but scientific investigation and filing of an application under Section 45 of Evidence Act which deals with relevancy of expert opinion is depreciable. In addition to that, the petitioner also quoted Order XVI Rule 10(1) C.P.C i.e. procedure of Commissioner, either of the

provisions or rules for the purpose of referring disputed signature on Ex.A-1 for comparison with admitted signatures by the expert.

When the petitioner denied his signature, to substantiate his contention, he may take assistance of the expert to prove that the signature appearing on Ex.A-1 is not that of the petitioner. But the Trial Court dismissed the application on the ground that this Court can exercise power under Section 73. No doubt, such power is conferred on the Court. But, such power has to be exercised sparingly in a situation where either of the party chooses to refer the document to an expert, since the Court is not an expert in the field of scientific investigation, more particularly, to compare the signature and conclude totally whether the signature appearing on Ex.A-1 is forged or not.

A similar question came up before this Court in **P. Kusuma Kumari v. State of Andhra Pradesh and another**¹ wherein this Court held that disputed signature is required to be referred to the expert along with admitted signatures of the party, the Court is bound to refer the document and availability by exercising power under Section 73, is not a ground. If this principle is applied to the present facts of the case, dismissal of application for referring the disputed signature on Ex.A-1 with admitted signature in the petition is erroneous.

The other ground, for dismissal of the petition is that, contemporaneous signatures of the petitioner are not available on

¹ 2015 (1) ALD (CrL.) 995

any authenticated document as stated either in the petition or in the evidence and the petition also did not disclose about non-availability of the contemporaneous signatures of the petitioner on any authentic document. Hence, it is for the petitioner to produce the contemporaneous signatures to enable the expert to give his opinion. Further, the natural characteristic of a signature of any person will not change, except under various circumstances. The natural characteristics of the handwriting of any person may vary slightly, but it would not change its natural characteristic normally. Therefore, if the expert finds any difficulty in comparison of the signatures, then, the Court may recall the warrant, but at this stage, such request cannot be denied. Therefore, the order passed by the Trial Court refusing to refer the document to handwriting expert is contrary to the principles laid down in the judgments referred supra.

The delay is not a ground to refuse such relief, since Order XXVI Rule 10-A C.P.C permits the Court to entertain an application and pass appropriate order at any stage of the proceedings, including appellate stage. Therefore, delay by itself is not a ground to refuse such relief. Hence, I find that the order of the Trial Court in I.A.No.654 of 2016 in O.S.No.241 of 2015 is contrary to the principles laid down by this court in various judgments referred supra and the same is liable to be set-aside and accordingly set-aside.

In the result, the civil revision petition is allowed, setting aside the order dated 18.01.2017 passed by the Principal Senior Civil Judge, Ananthapuram in I.A.No.654 of 2016 in O.S.No.241 of 2015, directing the Principal Senior Civil Judge, Ananthapuram to refer Ex.A-1 which contained disputed signatures of the petitioner along with contemporaneous signatures if any available on authenticated document and specimen signatures obtained in the Court to the expert for his opinion, which is relevant under Section 45 of Evidence Act.

Consequently, miscellaneous petitions pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:14.07.2017

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