

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ CIVIL REVISION PETITION No.3095 of 2017

% Dated : 07.07.2017

#SDintakurthi Narayana,
S/o. China Vengaiah,
Aged about 52 years,
Hindu, Agriculturist,
Residing at Udayagiri Village & Post,
Udayagiri Mandal,
SPSR Nellore District.

..... Petitioner

AND

\$ Rachuru Bhaskar Rao,
S/o. Subba Rao,
Aged about 30 years, Hindu,
Business,
Residing at Udayagiri Village & Post,
Udayagiri Mandal,
SPSR Nellore District.

..... Respondent

! Counsel for Appellant : Sri A.S.C. Bose

^Counsel for Respondent :

<GIST :

>HEAD NOTE :

? Cases referred :

2016 (2) ALD 1 (FB)

HON'BLE SRI JUSTICE CHALLA KODANDA RAM**CIVIL REVISION PETITION No.3095 of 2017****ORDER:**

The Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant against the order, dated 07.02.2017, passed by the Senior Civil Judge, Kavali, in I.A.No.1111 of 2016 in O.S.No.56 of 2013.

2. Heard both sides and perused the material available on record.

3. The petitioner/defendant filed I.A.No.1111 of 2016 under Section 45 of the Indian Evidence Act, 1872, read with Section 151 of the Code of Civil Procedure, 1908, to send the suit pronote, dated 01.04.2010, to the Hand Writing Expert for comparison of the signatures of the petitioner/defendant with the admitted signatures of the petitioner/defendant. The learned Senior Civil Judge, Kavali, dismissed the said I.A.No.1111 of 2016 on the ground that the petitioner has failed to produce the contemporary admitted signatures.

4. Learned counsel for the petitioner places reliance on the Full Bench judgment of this Court reported in ***Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash and others***¹, wherein this Court held that there is no bar to send disputed handwriting/signature for comparison to expert merely because time gap between admitted handwriting/signature and disputed handwriting/signature is long. In the present case,

¹ 2016 (2) ALD 1 (FB)

I.A.No.1111 of 2016 is filed by the petitioner/defendant to send the suit pronote, dated 01.04.2010, to the Hand Writing Expert for comparison of the signatures of the petitioner/defendant with the admitted signatures of the petitioner/defendant merely on the ground that a party has failed to produce the contemporaneous signatures to the expert.

5. In that view of the matter, learned counsel for the petitioner submits that the order of the learned Senior Civil Judge is erroneous and is liable to be set aside.

6. Having considered the judgment of the Full Bench and having considered the facts on hand, it may be noted that the suit promissory note is dated 01.04.2010. The prayer in I.A.No.1111 of 2016 itself is to send the disputed promissory note, dated 01.04.2010, to the Hand Writing Expert to the Crime Branch of Andhra Pradesh, Red Hills, Hyderabad, for comparing the signature of the petitioner/defendant on the promissory note with admitted signatures of the petitioner/defendant. In the entire affidavit filed by the petitioner/defendant in support of the above said I.A., it is not the case of the petitioner that the contemporaneous signatures of the petitioner/defendant are not available. When such is not the plea and when the contemporaneous signatures of the petitioner/defendant are not available, the ratio laid down by the Full Bench in ***Bande Siva Shankara Srinivasa Prasad's case (supra 1)*** has no application. It is not in every case that the ratio of the Full Bench in the above referred case is to be applied rather the same is an exception to the normal course where the contemporaneous

signatures or the writings are not available, the expert's opinion with respect to disputed documents where it becomes inevitable can be called for. When the contemporaneous signatures are available for comparison, that would give the correct picture which can be treated as best evidence.

7. Considering the facts and circumstances of the case and considering the submission made by the learned counsel for the petitioner that the petitioner would furnish the admitted contemporaneous signatures/writings before the trial Court in order to avoid any further delay, the impugned order, dated 07.02.2017, is liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed by setting aside the impugned order, dated 07.02.2017, passed by the Senior Civil Judge, Kavali, in I.A.No.1111 of 2016 in O.S.No.56 of 2013, subject to the condition that the petitioner/defendant shall pay an amount of Rs.5,000/- (Rupees five thousand only) to the respondent/plaintiff and the petitioner/defendant shall submit the admitted/undisputed contemporaneous signatures before the trial Court within a period of two (02) weeks from the date of receipt of a copy of this order. As and when the learned counsel for the petitioner files a Memo in proof of payment of costs to the respondent/plaintiff and on filing the undisputed admitted signatures before the trial Court, the learned Senior Civil Judge, Kavali, shall take necessary steps to send the documents to the Forensic Expert as prayed in I.A.No.1111 of 2016 in O.S.No.56 of 2013. There shall

be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

Date: 7th July, 2017

Note: L.R. copy to be marked.

(B/o.)
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HON'BLE SRI JUSTICE CHALLA KODANDA RAM



CIVIL REVISION PETITION No.3095 of 2017

Date: 7th July, 2017

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