**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION NO.1276 OF 2016**

**ORDER**:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order in I.A.No.189 of 2016 in O.S.No.341 of 2008 dated 15.02.2016 passed by the Principal Senior Civil Judge, Ongole, dismissing the petition filed under Section 45 of the Indian Evidence Act, defendant the refer the disputed signatures of the second respondent on relevant documents on the application filed by the petitioner in the suit to the expert for examination and his opinion.

The petitioner/third defendant filed petition under Section 45 of the Indian Evidence Act alleging that the first respondent filed a suit for recovery of amount based on three cheques, allegedly issued by respondents 2 & 3. But, the defendants filed written statement contending that the signature of second defendant on Ex.A-3 is disputed by the petitioner/third defendant. Surprisingly, the suit was not pressed against the second defendant, though the liability is joint and several, on the ground that the whereabouts of the second defendant were not known. As the signature of the second defendant on Ex.A-3 is not disputed while admitting signature of third defendant on the cheque, he sought opinion of handwriting expert for examination and requested the Court to refer the disputed signatures with admitted signatures of second defendant on Exs.A-1 & A-2 for comparison and expert opinion.

The first respondent filed counter affidavit denying material allegations, while contending that the cheque bearing no.989680 dated 12.01.2007 for Rs.4,06,584/- issued in favour of the plaitniff/first respondent was dishonoured, defendants 2 & 3 are liable to pay the said amount covered by the cheque with interest. But, it is contended that the alleged cheque dated 12.01.2007 is forged and fabricated one basing on a blank cheque signed by him and kept in his office and by forging the signature of the second defendant as false. At this stage, the document cannot be sent for comparison and opinion, as the standard signatures of second defendant are not available and prayed for dismissal of the petition.

Upon hearing argument of both the counsel, the Trial Court while observing that there is a variation in the admitted signature and disputed signature, declined to refer the document to expert on the ground that the petitioner/third defendant has no *locus* to make such a request to refer the documents for expert opinion and dismissed the petition.

During hearing, learned counsel for the petitioner reiterated the contention while contending that the defendants 2 & 3 are jointly liable for the debt, if any, due. In such a case, the petitioner is competent to question the signature of second defendant on Ex.A-3. Therefore, the conclusion arrived by the Trial Court that the petitioner has no *locus standi* is without any legal basis. Therefore, the order passed by the Trial Court is erroneous on the face of record and prayed to set-aside the same and allow the petitioner and refer the documents containing admitted signatures on Ex.A-3 and admitted signatures of second respondent on Exs.A-1 & A-2 to the expert for comparison and his opinion.

Learned counsel for the respondents Sri Nuthalapati Krishna Murthy supported the order of the Trial Court in all respects, mainly drawing the attention of this Court to the criminal proceedings under Section 138 of Negotiable Instruments Act and so also the *locus standi* of the petitioner to file the present petition.

Considering rival contentions and perusing the material available on record, the only point that arise for consideration is: ***"whether the petitioner is competent to request the Court to refer the documents containing disputed signatures i.e.Ex.A-3 and the document containing admitted signatures on Exs.A-1 & A-2 to an expert calling for comparison and his opinion?"***

***<u>POINT</u>:***

The petitioner is third defendant, who is the partner with defendants 1 & 2. Defendants 2 & 3 are authorized signatories to cheques and transact business. The petitioner/3rd defendant admitted his signatures on Ex.A-3, so also on Exs.A-1 & A-2, but disputed the signatures on Ex.A-2 of second defendant, since the liability of the petitioner and second defendant is joint and several, being the partners of the first defendant firm. But, for the reasons best known to the petitioner, he has not pressed the suit against the second defendant, though liability of defendants 2 & 3 is joint and several and decree is claimed against both. But, it is irrelevant for deciding the real controversy in the present petition. To attach liability against the petitioner herein/third defendant, the petitioner has to prove issue of cheque by both authorized signatories i.e defendant nos.2 & 3 and if, for any reason, the signature of second defendant on Ex.A-3 is found forged, then no liability can be attached to the petitioner herein/third defendant, in view of Section 87 of Negotiable Instruments Act. Therefore, to avoid his liability, the petitioner/third defendant though admitted his signature on Ex.A-3, is entitled to question the signature of second defendant on Ex.A-3 on the cheque. Therefore, he is competent and he has locus to question the same. Consequently, dismissal of the petition on the ground that this petitioner has no *locus standi* or incompetent to file the petition to make such request is an error apparent on the face of the record.

The other observation made in the order is that there is a variation in the signature of second defendant on Ex.A-3 and signature of second defendant on Exs.A-1 & A-2. However, it is evident from the record that the disputed signature of second defendant is available on Ex.A-3 dated 12.01.2007, whereas, Exs.A-1 & A-2 is 16.08.2005 which is two years prior to the disputed documents containing the disputed signatures, which is almost contemporaneous. Moreover, it is for the expert to decide whether he can give opinion comparing the disputed signature with the admitted signature. The Court also made an observation that the Court is empowered to compare the signatures by exercising power under Section 73 of Indian Evidence Act, but the High Court in various judgments, time and again cautioned not to undertake such exercise, except under exceptional circumstances. Hence, conferring power on the Court under Section 73 of Indian Evidence Act is not a ground to deny the relief.

On an overall consideration of the material on record, the disputed signature on Ex.A-3 and admitted signatures on Exs.A-1 & A-2 are within the proximity of time and almost contemporaneous documents. Hence, the order passed by the Trial Court is erroneous, since the Trial Court did not exercise its discretion that vested on it. In such a case, this Court can exercise its jurisdiction under Article 227 of the Constitution of India and set-aside the same.

In view of my foregoing discussion, I find that the order in I.A.No.189 of 2016 in O.S.No.341 of 2008 dated 15.02.2016 passed by the Principal Senior Civil Judge, Ongole is erroneous and the same is hereby set-aside.

In the result, the civil revision petition is allowed, setting-aside the order in I.A.No.189 of 2016 in O.S.No.341 of 2008 dated 15.02.2016 passed by the Principal Senior Civil Judge, Ongole, directing the Trial Court to refer the disputed signature of D-2 on Ex.A-3 and admitted signatures of D-2 on Exs.A-1 & A-2 to the expert for comparison and his opinion, so as to arrive at just conclusion in the suit, subject to compliance of other requirements for such purpose.

The Trial Court is also directed to fix time for sending opinion by the expert to avoid undue delay in disposal of the matter.

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

**JUSTICE M. SATYANARAYANA MURTHY**

Dated 14.06.2017

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