

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.Nos.5928 & 5940 OF 2017

COMMON ORDER

Both the Civil Revision Petitions are directed against the orders dated 23.10.2017 passed in I.A.Nos.941 & 942 of 2017 in O.S.Nos.53 & 54 of 2016 by the Principal District Judge, Nellore.

Both the civil revision petitions are filed by the same petitioner, who is defendant in O.S.Nos.53 & 54 of 2016, and the plaintiffs are different persons.

Since the issue involved in both the civil revision petitions is one and the same, they are being disposed of by this common order.

The respondents-plaintiffs filed suits for recovery of money from the defendant. In the said suits, the defendant filed two separate applications in I.A.Nos.941 & 942 of 2017 seeking to send the suit promissory notes for comparison of the disputed signatures with the contemporary signatures of the petitioner. The said applications were contested by the respondents-plaintiffs. The trial Court dismissed the said applications by orders dated 23.10.2017. Challenging the same, the present civil revision petitions are filed.

In the affidavit filed in support of her application, the defendant stated that earlier she filed a similar application and the report of the expert was obtained by the trial Court. As the earlier report was incorrect, she thought it fit to obtain a second opinion in order to get a better result from another expert and hence, she filed the present applications.

A counter-affidavit is filed by the respondents-plaintiffs stating that the present applications were filed by the petitioner-defendant without filing any objection and without examining the said expert to prove the irregularities and the opinion of second expert can be sought only when there are grave irregularities in the opinion of the first expert or when the Court comes to a conclusion that the opinion of the expert is biased.

The trial Court dismissed the said applications with the following observations by separate orders.

“And in the instant case, the petitioner, except stating in her affidavit the opinion of expert is not correct, did not point out any infirmity in the opinion, and also no endeavour was made by her to examine the expert, to doubt his opinion expressed, touching the disputed signatures on Exhibits A1 and A2, and in the above judgment the Hon’ble High Court it was made clear, under the circumstances stated therein, second opinion can be had from handwriting expert, if the opinion is not satisfactory, expert has not followed the required procedure

and the opinion is prima-facie incorrect, and the expert has acted in a partisan manner, and referring the matter for second opinion is useful for better appreciation of evidence, and to reach just conclusion in the proceedings, and however, no such reasons are made out by petitioner in her case, to send Exhibits A2 and A2 to handwriting expert, Forensic Science Laboratory Central, Pune to seek a second opinion, barring a bald allegation that the opinion of first expert is incorrect, thus no justifiable grounds are made out to once again refer Exhibits A1 and A2 to handwriting expert, thus the point is answered accordingly against the petitioner.

Learned counsel appearing for the petitioner-defendant relied on a decision of Division Bench of this Court in *M.Ramesh Babu v. M.Sreedhar*¹.

The Division Bench took note of the situation in the said case and in paragraphs No.50 & 51 of the Judgment, it was made clear that it is not desirable to send the documents for second opinion without there being any valid reason.

As rightly pointed out by the trial Court, except stating that the opinion of the expert was incorrect, the petitioner did not make out any case for sending the suit documents for second opinion by another expert, and there is no need to send the documents for opinion of the second expert. This Court does not find any error in the impugned orders passed by the trial Court.

¹ 2009(4) ALT 780 (DB)

Accordingly, the Civil Revision Petitions are dismissed. However, this order will not prevent the petitioner from taking out another application at an appropriate stage, if she so chooses justifying such application. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

17th November, 2017
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Note: Issue CC by three days.

