

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CIVIL REVISION PETITION No.3412 OF 2016**

**ORDER:**

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the orders dated 13.04.2016 passed in I.A.No.64 of 2016 in O.S.No.1063 of 2012 on the file of the Court of the VII Additional Senior Civil Judge, Vijayawada.

2. The facts leading to filing of the present revision are briefly as follows: The respondent herein filed O.S.No.1063 of 2012 on the file of the Court of the VII Additional Senior Civil Judge, Vijayawada, against the petitioner herein for recovery of an amount of Rs.5,15,032/- basing on the promissory note-Ex.A.1 and cheque-Ex.A.2. After completion of the evidence of D.Ws.1 and 2, the matter was posted for further evidence on behalf of the defendant. At that stage, the petitioner filed I.A.No.64 of 2016 in O.S.No.1063 of 2012 with a request to send Exs.A.1 and A.2 to the expert to compare the signatures on them with her signatures on vakalat and written statement. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

3. Learned counsel for the petitioner strenuously submitted that the trial Court has misconstrued the scope of Section 45 of the Indian Evidence Act and dismissed the petition. She further submitted that the finding of the trial Court that the present petition is not maintainable as the orders passed in I.A.Nos.518 and 520 of 2015 became final, is not sustainable either on facts or in law.

4. Learned counsel for the respondent submitted that any opinion given by an expert is not a substantial piece of evidence. He further submitted that the possibility of changing her signature by the petitioner on vakalatnama and written statement in order to overcome the adverse situation cannot be ruled out completely. He also submitted that the trial Court considered the material available on record in right perspective and dismissed the petition.

5. Now the point that arises for consideration in this Civil Revision Petition is:

*‘Whether there is any illegality, irregularity or impropriety in the orders of the trial Court, which warrants interference of this Court by exercising jurisdiction under Article 227 of the Constitution of India?’*

6. The learned counsel for the petitioner has drawn the attention of this Court to the following decisions:

(i) **Jonnalagadda Ravi Sankar v. Jakka Rama Krishna Rao<sup>1</sup>**,

wherein this Court held at paragraph No.4 as follows:

“4. ... At any rate, the opinion expressed by an expert is not conclusive in nature and the parties to the litigation can certainly put forward their contentions in favour of or against such opinion. ...”

As per the principle enunciated in the case cited supra, the Court has to send contemporaneous documents for comparison.

(ii) **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya**

**Prakash<sup>2</sup>**, wherein the Full Bench of this Court held at paragraph No.15 as follows:

“15. ... The view expressed by the Division Bench in *Janachaitanya Housing Limited v. Divya Financiers*, 2008 (4) ALD 339 (DB), as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field

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<sup>1</sup> 2013 (1) ALD 213

<sup>2</sup> 2016(2) ALD 1 (FB)

and there is no necessity for this Full Bench to address that issue.”

As per the principle enunciated in the case cited supra, mere delay in filing a petition is not a ground to dismiss the petition.

7. Let me consider the facts of the case on hand in the light of the above legal principles.

8. The material available on record clearly reveals that the petitioner herein filed I.A.No.64 of 2016 in O.S.No.1063 of 2012, under Section 45 of the Indian Evidence Act, when the matter is coming up for further evidence on behalf of the defendant. A perusal of the record clinchingly establishes that the petitioner sent the documents to the expert without prior permission of the Court. The record further reveals that the petitioner filed I.A.No.518 of 2015 in O.S.No.1063 of 2012, under Order VIII Rule 1(A)(3) and Section 151 of C.P.C., to mark the expert opinion. The petitioner also filed I.A.No.520 of 2015 in O.S.No.1063 of 2012 for issuance of summons to the expert. The trial Court dismissed I.A.Nos.518 and 520 of 2015 on merits. For one reason or other, the petitioner did not choose to challenge the order of the trial Court passed in I.A.Nos.518 and 520 of 2015. The relief sought in I.A.Nos.518 and 520 of 2015 and the present application i.e., I.A.No.64 of 2016 is almost similar. The promissory note pertains to the year 2009 whereas the respondent filed written statement in the year 2012. It is needless to say that a person, who seeks to send his disputed signatures, ought to have filed public documents containing the admitted signatures of such person for comparison and report. As rightly pointed out by the learned counsel for the respondent, the possibility of changing the signature by the

petitioner in the vakalatnama and written statement cannot be ruled out completely. For the reasons best known, the petitioner did not file contemporaneous public documents containing her admitted signatures to send her disputed signatures on Exs.A.1 and A.2 to the Central Forensic Science Laboratory for the purpose of comparison and report. It is a settled principle of law that an expert opinion is not a substantial piece of evidence as laid down in **Jonnalagadda Ravi Sankar** (1 supra). The suit is coming up for arguments. At this stage, no purpose will be served by sending the documents to the expert. The possibility of filing this type of petitions to drag on the proceedings cannot be ruled out completely. The trial Court considered the material available on record in right perspective and dismissed the petition. The findings recorded by the trial Court are supported by material available on record. I am fully endorsing the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the orders of the trial Court, which warrants interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

9. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

**T.SUNIL CHOWDARY, J**

Date: 14.06.2018  
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