

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2006 OF 2011

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the order dated 21.04.2011 in I.A. No.196 of 2011 in O.S. No.93 of 2010 passed by the Principal Senior Civil Judge, Tenali, whereby the learned Senior Civil Judge dismissed the petition filed under Section 45 of the Indian Evidence Act, 1872 read with Order 26 Rule 10-A of the Code of Civil Procedure, 1908.

The petitioner filed the petition to send the disputed signatures on promissory note along with the admitted signatures to the handwriting expert for comparison and opinion contending that suit promissory note is a forged document, but the court below passed the cryptic order in five lines without assigning any reasons for dismissal of the petition and observed that opinion evidence cannot override the direct evidence of witness. When there is voluminous direct evidence on record, there is no necessity to send the disputed signatures to expert and also observed that the court can exercise powers under Section 73 of the Evidence Act to compare the admitted signature, but these observations are not sufficient to dismiss the petition and order is cryptic in nature, non disclosing any reason for dismissal of the application is suffice to set aside the order. Therefore, the order is unsustainable. Learned counsel for the petitioner placed reliance on two judgments of this Court in **Guru Govindu v. Devarapu Venkataramana**¹ and in **Thumu Srikanth v. Akula Babu**²

¹ 2006(5) ALT 17

² 2010(5) ALD 795

wherein it was held that it is not as if the application under Section 45 of the Act must be filed soon after the written statement is presented. There may be instances where the necessity to file such application would arise after the oral evidence of certain witnesses is over.

There is no dispute with regard to option left open to the parties to file appropriate application at any stage and this question was already answered by the Full Bench of this Court making it clear that an application can be moved at any stage pending proceedings. Therefore, dismissal of application on the ground that it is belated one is not a ground and the order is bereft of any reasoning. Hence, the order under challenge is set aside directing the learned Senior Civil Judge to pass a reasoned order in accordance with law within three weeks from the date of receipt of a copy of this order.

Accordingly, the civil revision petition is disposed of. No costs.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:15.03.2018

Note: Issue copy by 19.03.2018.
b/o. BV