

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.801 of 2018

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed by the petitioner-defendant assailing the order, dated 14.12.2017, of the learned VIII Additional District Judge, Miryalaguda, passed in IA.No.40 of 2015 in A.S.no.92 of 2013 filed under Section 45 of the Indian Evidence Act, 1872, requesting to send exhibit A1, agreement of sale, dated 02.12.1999, to an expert of State Forensic Science Laboratory, Red Hills, Hyderabad, for furnishing an opinion as to whether the year '2000' in the 7th line from the bottom of first page of the said agreement of sale is altered as '2002'.

2. I have heard the submissions of *Sri Gade Venkateswara Rao*, learned counsel for the revision petitioner-defendant, and of *Sri A.Abhishek Reddy*, learned counsel for the respondent-plaintiff. I have perused the material record.

3. The parties shall hereinafter be referred to as the plaintiff and the defendant for convenience and clarity.

4. The facts discernable from the record and the submissions made before this Court, in brief, are as follows:

The plaintiff brought the suit against the defendant seeking specific performance of an agreement of sale. Having filed a written statement, the defendant resisted the suit. After full-fledged trial, the said suit was decreed in favour of the plaintiff. Aggrieved of the judgment and decree of the trial Court, the defendant preferred first appeal before VIII Additional District Judge, Miryalguda. During the pendency of the said appeal, the defendant filed two applications, viz., (i) I.A.no.541 of 2017 seeking permission to amend the written statement to explain or clarify the disputed admissions in the

written statement; and, (ii) the subject application I.A.no.40 of 2015 requesting to send exhibit A1, the suit agreement of sale, dated 02.12.1999, to an expert of the State Forensic Science Laboratory for furnishing an opinion as to whether the year '2000' is altered as '2002' in the 7th line from the bottom of the first page of the agreement. On merits, the Court below dismissed both the applications. Hence, this revision and the other revision in C.R.P.no.6949 of 2017 are filed by the defendant.

5. Before proceeding further, it is necessary to refer to the pleadings of the parties.

5.1 The case of the defendant in support of the request aforesaid, in brief, is as follows:

The plaintiff brought the suit seeking the relief of specific performance of an agreement of sale, dated 02.12.1999. In the plaint, it was averred that prior to the filing of the suit, the plaintiff got issued a legal notice to this defendant. But, the same was not served as the defendant had shifted his residence from Damarcherla of Nalgonda District to Piduguralla of Guntur District by then. After filing of the suit, he came to know that the said legal notice was sent through one M.Yadagiri Swamy, Advocate, Miryalguda. The said fact is not known to this defendant. The said advocate filed written statement on behalf of this defendant. After full-fledged trial, the suit was decreed by the trial Court. The trial Court in its judgment opined that there are some minor corrections in typing of the exhibit A1 agreement and that amongst such corrections, the words 'Feb.2002' are also corrected typographically. Without this defendant's consent and knowledge and without bringing to the notice of this defendant, the following sentence – '*... and it is true as per the conditions of the agreement, the plaintiff has to pay the balance consideration of Rs.75,000/- and get to be registered the said property on or before dated Feb.2002*' was added at the end of the 4th paragraph of the written statement.

He did not put his initial at the above said sentence added in handwriting in the written statement. Three interlocutory applications were also filed by the plaintiff. This defendant's former counsel endorsed 'no objection' on the said applications. This defendant has been residing at Piduguralla and hence, he could not file a petition to send exhibit A1 to an expert to find out the correction made at the portion of the year '2000' as '2002'. At the time of preparing for arguments in the case and after going through the entire file, the counsel came to know recently that the year '2000' was changed as '2002' to save limitation. Hence, the subject petition to send the document to an expert could not be filed when the matter is pending before the trial Court. The photostat copy of exhibit A1, agreement of sale, was supplied to this defendant by the elders at the time of execution of the same. In that copy, the year is appearing as February, 2000. Hence, this defendant did not entertain any doubt. However, after the counsel came to know about the change of the year, the petition is filed before the Court below requesting to send exhibit A1-agreement of sale to an expert for furnishing a report with his opinion on the alteration made therein and for furnishing a report with his opinion.

5.2 The case of the plaintiff is as follows:

Before filing of the suit for specific performance, a legal notice was got issued by the plaintiff to the defendant. In paragraph 3 of the written statement, the defendant categorically admitted that he received the legal notice, dated 17.12.2004. The said admission is sufficient to prove that the legal notice is served upon the defendant. In paragraph 4 of the written statement, the defendant categorically admitted *verbatim* as follows: '*... and it is true as per the conditions of the agreement, the plaintiff has to pay the balance consideration of Rs. 75,000/- and get to be registered the said property on or before dated Feb.2002*'. The allegation that his advocate made the correction without his consent is unbelievable. If he has any grievance against

his counsel, he has to seek relief against him from an appropriate Forum. The averment that the defendant is residing at Piduguralla and that he does not know the case proceedings and that as such he could not file the subject petition when the matter is pending before the trial Court is denied. The petition is intended to drag on the matter. The question of sending the document to an expert during the pendency of an appeal does not arise. The petition may be dismissed.

6. Learned counsel for the defendant contended as follows:

The Court below ought to have allowed the petition and ought to have sent exhibit A1, agreement of sale, to an expert for furnishing his opinion to know as to whether the figure '2000' in the recital of the exhibit A1 was altered as '2002' for the purpose of getting over the bar of limitation. The photostat copy of the sale agreement supplied to the defendant at the time of its execution clearly discloses the words 'February 2000'. The Court below ought to have seen that the defendant is suspecting his counsel as the counsel added a sentence at the end of paragraph 4 of the written statement in his handwriting without the knowledge and consent of this defendant only to support the case of the plaintiff. He came to know about the mischief of his said counsel after disposal of the suit. As such, he could not file the instant petition during the pendency of the suit before the trial Court. Further, at the time of preparing for arguments in the case and after going through the entire file, the counsel came to know recently that the year '2000' was changed as '2002' to save limitation. Hence, the subject petition is filed during the pendency of the appeal. If the document is not sent to the expert, the defendant suffers serious and irreparable loss.

7. On the other hand, learned counsel for the plaintiff while supporting the order of the Court below *inter alia* contended as follows: 'In the facts and circumstances of the case, the Court below is justified in dismissing the

application of the defendant. The present request for sending exhibit A1, agreement of sale, to an expert cannot be permitted during the pendency of the first appeal. Such a request, which is not *bona fide* and which is highly belated, cannot be entertained and permitted. The suit was decreed after full-fledged trial. During the course of trial, the defendant did not dispute the contents of exhibit A1, agreement of sale, and the *bona fides* and the authority of the counsel who filed the written statement and conducted the case on his behalf. After the suit was decreed, to get over the admissions and to somehow delay and defeat the just claim of the plaintiff, the defendant is making false allegations against his former counsel with *mala fide* intentions. The defendant admitted the true facts in his deposition before the trial Court. The present petition under the facts and circumstances of the case is not maintainable and is liable to be dismissed.'

8. I have given earnest consideration to the facts and submissions.

9. As per the settled legal position, it is essentially within the judicious discretion of the Court, depending upon the individual facts and circumstances of the case before it, to seek or not to seek an expert's opinion as to the genuineness or otherwise of the contents of a document. A Division Bench of this Court in Janachaitanya Housing Limited v. Divya Financiers¹ rendered a judgment upon a reference made by a learned Single Judge of this Court on the question as to whether an application under Section 45 of the Act of 1872 for expert opinion on disputed signatures could be entertained at a later stage of the suit, including when the suit was coming up for arguments after the entire trial. In the said decision, the Division Bench answered the reference as under: 'For the reasons aforementioned, we answer the reference thus: No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to

¹ 2008 (3) ALT 409 (DB)

the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case. Before proceeding further, it is trite to refer to the Full Bench decision of this Court in *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and others*² wherein the legal position is settled. The Full Bench answered the reference thus:

"It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/ signature with the admitted handwriting/ signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/ signature for comparison to an expert merely because the time gap between the admitted handwriting/ signature and the disputed handwriting/ signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/ signatures with admitted handwritings/ signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/ signature and the admitted handwriting/ signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in *Janachaitanya Housing Limited v. Divya Financiers* [2008 (3) ALT 409 (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 and there is no necessity for this Full Bench to address that issue."

10. As already noted, the judicious discretion must be exercised depending upon facts and circumstances of the individual case. Keeping in view the above

² AIR 2016 AP 118 (FB)

stated legal position, it is to be now examined as to whether the defendant made out valid and sufficient grounds to consider his request and whether the order passed by the Court below is sustainable in the facts and circumstances of the case.

11. Admittedly, the suit is filed for specific performance of an agreement of sale. The defendant having filed a written statement resisted the suit. The suit was decreed after full-fledged trial. The defendant is now requesting the first appellate Court to seek an opinion of an expert as to whether the figure '2000' in exhibit A1, the agreement of sale, is altered as '2002'. The defendant neither raised the necessary contention before the trial Court nor made the present request before the trial Court. No doubt, a perusal of the written statement reflects that the following sentence was added at the end of paragraph (4) of the written statement in the handwriting obviously of the counsel: *'... and it is true as per the conditions of the agreement, the plaintiff has to pay the balance consideration of Rs.75,000/- and get to be registered the said property on or before dated Feb.2002'* [reproduced verbatim]. It is undisputed that the counsel put his initials at the beginning and at the end of the above stated sentence, which was added in the written statement in handwriting. As noted, during the course of the trial, the defendant did not raise an issue by stating that the year '2000' in one of the recitals of exhibit A1 agreement was altered as '2002' by the plaintiff to get over the bar of limitation. PW1 was not cross-examined on the said aspect. DW1 also did not depose about the said alleged alteration of the year in exhibit A1, agreement of sale. After the suit was decreed after full-fledged trial, the defendant having filed the first appeal now contends that the above said sentence was added by his counsel in handwriting in the written statement without his consent and knowledge and by playing mischief behind his back. He also submits that the counsel played fraud upon him, and hence, he may be permitted to amend the written statement and clarify the above sentence

containing the above admission. He is also making a request now to permit to seek an opinion of an expert as to the above stated alteration of the year in exhibit A1, agreement. The defendant also submits that, since he has been residing at Piduguralla for the last 16 years, he does not know about the case proceedings and hence, he could not file a similar petition before the trial Court and that at the time of preparing for arguments and after going through the entire file, his counsel came to know that the year '2000' mentioned in the recital of the agreement was changed as '2002' to save limitation, and hence, the application for amendment of written statement as well as the subject application are filed on the advise of the counsel. However, a perusal of the affidavit in lieu of his examination-in-chief filed before the trial Court would show that he stated in the said sworn affidavit as follows: 'That as per the conditions of the agreement, the plaintiff has to pay the balance of consideration of Rs.75,000/- and get registration of the said property by the end of February, 2002. Time is the essence of the contract.' This assertion in the sworn affidavit filed in lieu of his examination-in-chief would show that the defendant admitted the year as '2002' and further stated that time is the essence of the contract. The defendant is not disputing this statement in his said sworn statement. In the considered view of this Court, the defendant cannot get over this admission in his evidence given on oath in the form of an affidavit filed in lieu of his examination-in-chief. If the defendant's specific case is that the year is '2000', he ought not to have made the above statement in his sworn affidavit filed in lieu of his examination in chief. The above statement made in March, 2013 in his examination in chief during the course of the trial, belies the contention of the defendant that he came to know about the adding of the above mentioned sentence at the end of paragraph 4 of the written statement at the time of preparation of arguments. No reasons or explanation is forthcoming for not filing this petition before the trial Court. In that view of the matter, it is clear that the reasons stated for seeking the

instant relief are obviously false and contrary to the record. Therefore, the contention of the defendant that he is not aware of the adding of the above said sentence in the written statement when the suit is pending adjudication before the trial Court and that he came to know about the same during the pendency of the first appeal deserve no countenance. The present request contrary to the admission in the deposition of the defendant cannot be entertained when the defendant is not disputing the said statement made in his sworn affidavit filed before the trial Court in lieu of examination in chief.

12. Having regard to the facts & circumstances and on the above analysis, this Court finds that the Court below is justified in holding that the petition lacks merit and is liable to be dismissed. As a sequel, this Court holds that the impugned order of the Court below is sustainable both under facts and in law and that it does not brook any interference.

13. In the result, the Civil Revision Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

11th April, 2018
RAR

M. SEETHARAMA MURTI, J