

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3200 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.2845 of 2015 in O.S.No.275 of 2013 dated 13.04.2016 passed by the Additional Senior Civil Judge, Eluru, dismissing an application filed under Section 45 of Indian Evidence Act to refer the disputed signatures along with admitted signatures on the document available, to the expert for his opinion.

For the sake of convenience, the parties will be referred as arrayed in the I.A.No.2845 of 2015.s

The respondent/plaintiff filed O.S.No.275 of 2013 for recovery of amount of Rs.4,00,000/-, based on promissory note and the contention of this petitioner was that, it was a forged document and filed petition under Section 45 of Indian Evidence Act to refer the disputed signatures and admitted signatures to the expert for comparison and his opinion.

The respondent/plaintiff opposed the petition on various grounds, more particularly, the Trial Court dismissed I.A.No.2845 of 2015 on the sole ground of delay by relying on the judgment of this Court in **R.Ramanjaneyulu v. State of Andhra Pradesh**¹, where this Court held that the application for sending the disputed document for expert opinion cannot be allowed if it is filed after lapse of time if there is belatedness on the part of the party.

¹ 2014 (1) ALD (CrL.) 987 (A.P)

In this case, suit was filed in the year 2013 and I.A.No.2845 of 2015 was filed after two years from the date of plaint and consequently, by applying the principle laid down in the above judgment, the petition was dismissed.

However, this issue came up for consideration before this Court in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash**², wherein, the Full Bench of the Apex Court held that, delay is not a ground to refuse to send the disputed signatures to the expert for his opinion. Thus, the law declared by the learned Single Judge in **R.Ramanjaneyulu v. State of Andhra Pradesh** (referred supra) is contrary to the principle laid down by the Full Bench of this Court and the reason recorded by the Court is against the principle laid down in the judgment of the Full Bench of this Court. Therefore, dismissal of the application filed under Section 45 of Indian Evidence Act is illegal, arbitrary and contrary to law laid down by the Full bench of this Court in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash** (referred supra).

Section 45 of Indian Evidence Act deals with relevancy of expert opinion. But, instead of filing the petition under Order XXVI Rule 10 C.P.C, the petitioner filed an application under Section 45 of Indian Evidence Act, which deals with relevancy of opinion of an expert in the pending proceedings. However, wrong quoting or misquoting of provision of law is not a ground.

Hence, the order in I.A.No.2845 of 2015 in O.S.No.275 of 2013 dated 13.04.2016 passed by the Additional Senior Civil

² 2016 (2) ALD (F.B)

Judge, Eluru, is set-aside and consequently, the civil revision petition is allowed.

In the result, the civil revision petition is allowed, directing the Trial Court to refer the disputed signatures and admitted signatures to expert for opinion after compliance of necessary formalities by the petitioner.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:01.11.2018

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