

**THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**C.R.P.No.2240 of 2018**

**ORDER:**

This Civil Revision Petition is filed questioning the order dated 26.02.2018 passed in I.A.No.117 of 2018 to order to appoint an Advocate Commissioner to examine the Government hand writing expert.

Notice was ordered to respondents by this Court. The Commissioner sent a notice on 07.07.2018. He filed a tracking report showing that the letter is delivered at Bobbili on 12.07.2018. There is no appearance for the respondents despite of service of notice.

This Court, therefore, heard the learned counsel for the petitioner.

The petitioner's contention is that the receipt dated 13.01.2010 bears the signature of the plaintiff. The same was denied by the plaintiff. Therefore in March, 2017, an application was filed to send the said receipt to a handwriting expert and the handwriting expert submitted his report after examining the same. According to the learned counsel, the report itself is dated 27.07.2017 and it was received in the Court on 15.09.2017. He states that after the report was received in September, 2017, his client

could not file an application for appointment of an Advocate Commissioner to examine handwriting expert. He further submits that his client is aged about 65 years and could not meet his advocate to brief him about filing of the application. Therefore, he filed two applications i.e., I.A.No.117 of 2018 to appoint an Advocate Commissioner to examine the Government handwriting expert and I.A.No.118 of 2018 to reopen the matter, as the suit was closed and posted for arguments.

The Court below heard learned counsel for the petitioner. The respondents did not file the counter in this application. In the impugned order, the court noted it, posted the matter to 03.04.2017 for defendant's evidence and defendant's evidence was closed on that day. The Court also held that after the opinion of the expert is received, the petitioner kept quiet for all ten months. Hence, the Court below did not believe the reasons mentioned by the petitioner in not approaching his advocate in time to file application and dismissed the application. The learned counsel pointed out that when the report of the expert opinion is signed and forwarded on 27.07.2017, the Court below committed a fundamental error in holding that by April, 2017 itself the opinion of the

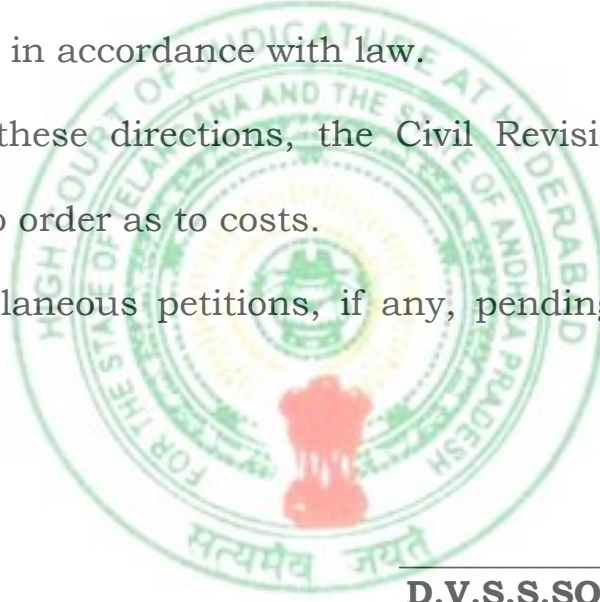
expert is received. Therefore, he questions the very premise on which the order is passed.

This Court, after hearing learned counsel notices that the Court below proceeded on the assumption that in April 2017 the opinion of the expert is received and that there is delay of more than 10 months in filing the application. However, the material papers booklet at page 29, is the copy of the report, shows that it is signed on 27.07.2017. Therefore, the premise on which the Court passed the impugned order *prima facie* appears to be incorrect. In addition, this Court is of the opinion that in view of the plea of the present petitioner, the marking of the document would be of fundamental importance to the case of the petitioner/appellant. The Court should lean towards receiving of evidence which has bearing on the pleas raised rather than shutting out the evidence. Therefore, this Court is of the opinion that the delay is not inordinate and the petitioner is entitled to an opportunity to examine the expert and unless the opinion of the expert is recorded and subjected to cross examination, it cannot be considered in the final judgment. This Court is of the opinion that the lower Court committed an error in dismissing the application.

The order dated 26.02.2018 is set aside. The I.A.No.117 of 2018 is allowed. The matter is remanded for the immediate appointment of an Advocate Commissioner to record the evidence of the handwriting expert. The Court below is also directed to fix a strict time table and ensure that the examination of expert witness and the receipt of the report of the Commissioner are completed and received within a period of 45 days from the date of receipt of the order. The request for adjournments should be dealt with strictly, but in accordance with law.

With these directions, the Civil Revision Petition is allowed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.



**D.V.S.S.SOMAYAJULU, J**

Dt: 24.08.2018  
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