

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

CRP No.102 of 2014

ORDER:

This Civil Revision Petition is filed questioning the order dated 20.11.2013 in IA No.921 of 2013 in OS No.146 of 2010 passed by the Senior Civil Judge, Miryalaguda.

The application IA No.921 of 2013 was filed to send the signatures appearing in Ex.P.1-demand promissory note to an expert of the Forensic Science Laboratory for comparison under Section 45 of the Indian Evidence Act. The application was heard on merits. It was dismissed by the lower Court on the ground that the Court itself has the power to compare signatures and to come an opinion keeping in view of the oral and documentary evidence let in by both the parties. Questioning the said order, the present revision is filed by the defendant.

This Court has heard Sri Eadara Peddanna, learned counsel for the revision petitioner/defendant and Sri Prabhala Rajasekhar, learned counsel for the respondent /plaintiff.

The learned counsel for the revision petitioner while relying on ***Guru Govindu v. Devarapu Venkataramana***¹ argues that an application can be filed even at a later stage and merely because it is filed at a belated stage, it cannot be countenanced. To the similar effect, another decision is also cited in ***Chityalgundameede Ramalakshamma v. Ediga Rangamma (died) per LRs***².

On the other hand, Sri P. Rajasekhar, learned counsel for the respondent/plaintiff supports the impugned order passed and states it is passed after considering the facts and circumstances of the case. He contends that even if the expert gives an opinion, ultimately the Court has to be convinced with such opinion. The opinion rendered by an expert is only a supporting material and it cannot be treated as a conclusive.

The point for consideration is whether the impugned order passed by the lower Court is right or wrong?

For a proper adjudication of the matter, it is relevant to cite two decisions of the Hon'ble Supreme Court of India viz., i) ***A. Neelalohithadasan Nadar v.***

¹ 2006 (5) ALT 17

² 2012 (6) ALT 539

George Mascrene³ and ii) **Ajay Kumar Parmar v. State of Rajasthan**⁴ regarding on the subject of sending of the signatures to an opinion of the expert. In **Ajay Kumar Parmar**'s case (4 supra), the Hon'ble Supreme Court of India held as follows:

“The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.” (Emphasis supplied)

³ 1994 (2) Supp SCC 619

⁴ (2012) 12 SCC 406

In **Ajay Kumar Parmar's** case (4 supra), the Hon'ble Supreme Court also relied on a finding in **O. Bharathan v. K. Sudhakaran & Anr.**, MANU/SC/0305/1996 : AIR 1996 SC 1140 and held as follows:

“this Court considered a similar issue and held that the facts of a case will be relevant to decide where the Court will exercise its power or comparing the signatures and where it will refer the matter to an expert. The observations of the Court are:

The learned Judge in our view was not right taking upon himself the hazardous task of adjudicating upon the genuineness and authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of.”

In view of the clear and authoritative pronouncement of the Hon'ble Supreme Court of India on this subject, this Court is of the opinion that the impugned order cannot be sustained.

In the result, the Civil Revision Petition is allowed. The order dated 20.11.2013 in IA No.921 of 2013 in OS No.146 of 2010 passed by the Senior Civil Judge, Miryalaguda is set aside.

At this stage, the learned counsel for the respondent /plaintiff submits that the revision is of the year 2014 and that further delay would be caused. This is a

relevant submission. As the suit is of the year 2010, the lower Court is directed to proceed with the trial on a priority basis. Requests for adjournment should be dealt with strictly but in accordance with law. The learned counsel for the revision petitioner/defendant submits that there is no need of further signatures to be taken in the open court and the available signatures (in Ex.A.1-demand promissory note, vakalat, written statement etc.,) can be sent to the Forensic Science Laboratory for comparison and for obtaining the opinion of an expert.

All requests for adjournments should be dealt with very strictly. Both parties are at liberty to raise all pleas/defences open to them, as this order is passed by considering facts for the purpose of this revision only. The lower Court should also decide the case without being influenced by what is stated in this order.

However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 13.11.2018
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