

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.2705 of 2018

ORDER:

This Civil Revision Petition is directed against the order dated 09.02.2018 in I.A.No.170 of 2016 in O.S.No.214 of 2012 passed by learned Senior Civil Judge, Nalgonda, dismissing the petition filed by the petitioner/plaintiff under Section 45 of Indian Evidence Act to send the signature of respondents 2 and 3/defendants 2 and 3 on Exs.A2, A7, A13 to A15 along with their admitted signatures on vakalatnama, written statement and chief-examination affidavit of DWs.1 and 2 for the purpose of comparison.

2) The parties in this CRP are referred as they were arrayed before the Trial Court.

3a) The plaintiff—A.P. Police Department Employees Benevolent and Thrift Mutual Association, filed the suit for recovery of amount against defendant Nos.1 to 3 basing on mortgage. It is the specific case of plaintiff that husband of 1st defendant availed loan for construction of house on Plot No.27 admeasuring 266.6 sq.yards in Sy.No.423 situated at Gandhamvariguda village, Nalgonda Mandal and District, for which defendants 2 and 3 stood as sureties and to that effect they executed an agreement in favour of plaintiff society on 20.06.2006. At the time of availing loan, the husband of 1st defendant agreed to repay the entire loan amount with interest in 180 installments @ Rs.4,924/- per month

w.e.f. September, 2006. Accordingly, the employer of 1st defendant used to deduct the said amount from his salary and in turn remit the same to the account of plaintiff-society. The EMIs were remitted by the employer from September, 2006 to November, 2008 and thereafter there was default in remittance of EMIs. While so, the plaintiff received a fax message dated 26.02.2011 from the Superintendent of Police, Nalgonda stating that the husband of 1st defendant was dismissed from service vide office D.O.No.2834/2011 from 08.12.2008 and subsequently died on 24.09.2010. The plaintiff issued letters to the 1st defendant being the legal heir of late K.Shakaraiah and also to defendants 2 and 3 to clear off the loan amount. The defendants received the letters but did not clear the loan amount. Hence, the plaintiff filed the suit.

b) The defendants 2 and 3 filed written statement contending that suit is barred by limitation and they have been unnecessarily added as parties to the suit for recovery of the suit amount. As the suit is filed basing on mortgage of schedule property, the suit is maintainable only against 1st defendant and not on other defendants. They contended that they never stood as sureties nor executed any agreement in favour of plaintiff on 20.06.2006.

c) While so, the plaintiff filed petition I.A.No.170 of 2016 praying the Court to send the signatures of defendants 2 and 3 on Exs./A2, A7, A13 to A15 along with their admitted signatures on vakalatnama, written statement, chief examination affidavit of DWs.1 and 2 for the purpose of comparison. The defendants opposed the petition.

d) The Trial Court dismissed the petition mainly on the first ground that the petition was filed belatedly when the evidence was completed and the matter was coming up for arguments. It dismissed the petition also on the ground that under Section 73 of Indian Evidence Act, 1872 (for short “the Act”), the Court can observe the disputed signatures and admitted signatures and can give finding and therefore, there was no necessity to send the documents to handwriting expert.

Hence, the present CRP at the instance of petitioner.

4) Heard arguments of Sri I.V.Radhakrishna Murthy, learned counsel for petitioner and Sri M.Rama Rao, learned counsel for respondents 2 and 3. There was no representation for respondent No.1.

5) Learned counsel for petitioner fulminates the order of the Trial Court on the main plank of argument that belatedness in seeking the intervention of an expert ought not to have weighed in the mind of the Trial Court to reject the application, for, the delay will not cause prejudice to other side. In this regard, he placed reliance on the decision reported in *Janachaitanya Housing Ltd. v. Divya Financiers*¹.

a) Nextly, learned counsel would argue that though the Court is vested with the power to compare the disputed signatures and handwritings to form an opinion under Section 73 of the Act, however, the Court must be slow in assuming the role of an expert. When the party upon whom the burden to prove the genuineness of a particular

¹ 2008(3) ALT 409 (DB)

document lies, the Court shall allow the petition filed by such party to refer the disputed document to an expert rather than scuttling the process of exhuming the truth. In this regard he relied upon the following decisions:

i) *O.Bharatan v. K.Sudhakaran and others*²

ii) *Mudi Reddy Tirupathi Reddy v. T.Linga Reddy and another*³

He thus prayed to allow the petition.

6) In oppugnation, learned counsel for respondents while supporting the impugned order would argue that the Trial Court was well within its power under Section 73 of the Act to compare the disputed signatures and handwritings by itself. In this case, the petition to refer the documents to expert was filed at a belated stage when the entire evidence was completed and the matter was posted for arguments. Therefore, the Trial Court considering its powers under Section 73 of the Act and also holding that there was ample evidence to resolve the disputed issue, rightly dismissed the petition. Therefore, the impugned order is impregnable. He placed reliance on the decision reported in *Ajay Kumar Parmar v. State of Rajasthan*⁴ and prayed to dismiss the petition.

7) In the light of above rival arguments, the point for determination is:

² AIR 1996 SC 1140

³ 2015 (6) ALT 512

⁴ (2012) 12 SCC 406

“Whether there are merits in this CRP to allow?”

8) **POINT:** As stated supra, the Trial Court dismissed the petition on two substantial grounds. Firstly, it was a belated petition, which ofcourse true because the petition was filed when the matter came up for arguments. However, the point is whether delay can be a ground to reject an application to send the disputed documents to an expert. This aspect has been considered by a Division Bench of this Court in *Janachaitanya Housing Ltd.*'s case (1 supra), wherein the Division Bench was considering the question *“Whether an application under Section 45 of the Evidence Act filed for sending the signatures for comparison and expert opinion, can be entertained at the later stage, including when coming up for arguments after entire trial?”*. The Division Bench answered the reference thus:

*“**Para 16:** 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 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.”*

Thus as per the opinion of Division Bench, delay cannot be a ground to reject an application filed under Section 45 of the Act. It all depends upon the discretion of the Court and when exigencies so demand, the Court can exercise its discretion to refer the document to the expert. Later in similar circumstances, when an expert petition was

filed when the matter was posted for arguments, a learned Single Judge of this Court in *Mudi Reddy Tirupathi Reddy*'s case (3 supra), relying upon *Janachaitanya Housing Ltd.*'s case (1 supra), expressed the view that the Court below cannot reject the expert petition on mere ground that it was filed at a belated stage. Learned Judge further expressed that when the entire case rests upon the question whether the disputed document was executed by the respondents or not, the Court below was not right in not referring the said document to expert.

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a) Therefore, the above jurimetrics would propound two important legal propositions. Firstly, mere delay is not a ground to reject an expert petition. Secondly, when the entire case hinges upon the point as to whether the disputed document was executed by the concerned party or not, the Court is not right in refusing to refer the disputed document to an expert. In the instant case, the plaintiff sued defendants 2 and 3 on the strength of surety agreement dated 20.06.2006 which was denied by them. Therefore, the entire liability of defendants 2 and 3 pivots on the genuineness of the agreement dated 20.06.2006. Hence it is apposite for the trial Court to refer the concerned documents to expert as requested by the plaintiff.

9) Coming to the other ground of dismissal, the Trial Court opined that in view of the powers conferred under Section 73 of the Indian Evidence Act, it can compare the signatures and handwritings on the disputed documents to decide the issue. It is true that Section 73 confers such powers on the Court. However, the precedential jurisprudence on

Section 73 would reveal said power is not an absolute one inasmuch as the Court shall be slow in donning the role of an expert since it is not an expert by itself and its opinion is not an epitome of accuracy. In ***State (Delhi Administration) vs. Pali Ram***⁵, the Apex Court reiterated the above view as follows:

“The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.”

In ***O.Bharatan***’s case (2 supra), the view expressed in ***Pali Ram***’s case (5 supra) was followed. In ***Ajay Kumar Parmar***’s case (4 supra) cited by the respondents also similar view was expressed, as follows:

“Para 23: *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*

⁵ 1979 CriLJ 17 = AIR 1979 SC 14

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.

(Emphasis supplied) 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.

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a) Thus the above decisions would explain us that though the Court is not debarred from comparing the handwritings and signatures by virtue of the power conferred under Section 73 of the Act, however, the said power shall be used by the Courts very sparingly as a secondary measure i.e, when there is sufficient evidence already on record in the form of expert's opinion or other evidence. In the instant case, the Court has no advantage of the opinion of the expert. It has only the other evidence before it. In that view of the matter, the Trial Court was not right in rejecting the petition filed by the plaintiff on the ground of delay or in view of power conferred under Section 73 of Evidence Act. Both the grounds projected by the Trial Court, in my considered view, will not withstand the test of logic and precedential law.

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10) In the result, this C.R.P is allowed by setting aside the order dt.09.02.2018 in I.A.No.170 of 2016 in O.S.No.214 of 2012 passed by learned Senior Civil Judge, Nalgonda. Consequently, I.A.No.170 of 2016 is allowed and the Trial Court is directed to refer the documents mentioned in the said I.A to the expert as prayed by the petitioner/ plaintiff. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 26.11.2018
Murthy/scs

