

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2250 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 06.03.2018 passed in I.A.No.75 of 2018 in O.S.No.412 of 2012 on the file of V Additional District Court, Vijayawada.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the petitioner filed O.S.No.412 of 2012 on the file of V Additional District Court, Vijayawada, against the respondents for recovery of the suit amount basing on Ex.A.1-promissory note and Exs.A.2 to A.4-part payment endorsements. After completion of the petitioner/plaintiff's side evidence, respondent Nos.1 to 3/defendant Nos.2 to 4 filed I.A.No.75 of 2018, under Section 45 of Indian Evidence Act read with Section 151 C.P.C. to send signature on Ex.A.1 for comparison with the signatures on Exs.A.2 to A.4-part payments to the expert. The petitioner filed counter *inter alia* contending that the petition is not maintainable either on facts or in law. The trial Court, after affording a reasonably opportunity to both parties, allowed the petition. Hence, the revision.

4. The point that arises for consideration is:

“Whether there is any illegality, irregularity or impropriety in the impugned order?”

5. It is the case of the petitioner that one Posani Krishna Rao borrowed money from the petitioner and executed Ex.A.1-

promissory note and Exs.A.2 to A.4-part payment endorsements. After the death of Krishna Rao, the petitioner filed O.S.No.412 of 2012 against the wife and children of Krishna Rao, who are respondents. The respondents have taken a specific plea that Exs.A.1 to A.4 do not bear the signature of Krishna Rao. During the course of trial, the respondents admitted that Ex.A.1-promissory note bears the signature of Krishna Rao. At the time of arguments, learned counsel for the third respondent, across the bar, submitted that Ex.A.1-promissory note bears the signature of Krishna Rao. The respondents are disputing the signatures of late Krishna Rao on Exs.A.2 to A.4-part payments. Whether Exs.A.2 to A.4 bears the signatures of late Krishna Rao can be resolved by sending Exs.A.1 to A.4 to the expert. In view of peculiar facts and circumstances of the case, the opinion expressed by the expert may to certain extent enables the Court to resolve the issue involved in the suit. This Court is very much conscious that opinion expressed by an expert is not a substantial piece of evidence. The very purpose of sending a document to the expert is to ascertain the opinion of the expert. If the document is sent to the expert, the expert may compare the admitted signature on Ex.A.1 with the disputed signatures on Exs.A.2 to A.4 and submit his report.

6. Learned counsel for the third respondent submitted that this Court shall not lightly interfere with the discretionary orders passed by the Courts below. To substantiate the case, he has drawn the attention of this Court to **Janachaitanya Housing Ltd.,**

Hyderabad v. Divya Financiers, Guntur¹, wherein the Division Bench of this Court held at paragraph No.3 as follows:

“3. Before we proceed to answer the reference, we must say the exercise of revisional jurisdiction under Article 227 for revising the order impugned is uncalled for at this stage, since the order if allowed to stand will not attain finality, and the learned trial Judge in his discretion, may accept the expert’s evidence or may not accept the same. Further, if the trial Court decides the issue only on the basis of the expert evidence, the same is capable of correction in appeal, if any, preferred by the aggrieved party. In the absence of any prejudice or manifest injustice would be done to the parties revision itself cannot be entertained as the same will not fall under the exceptions carved out by the Supreme Court in *Surya Dev Rao v. Ram Chander Rao*, 2003 (5) ALD 36 (SC) = (2003) 6 SCC 675.”

7. As per the principle enunciated in the case cited supra, this Court shall not lightly interfere with the discretionary orders passed by the Courts below while exercising the jurisdiction under Article 227 of the Constitution of India.

8. Even if the petition is allowed, the same may not affect the rights of the petitioner. The trial Court, taking into consideration the facts and circumstances of the case, allowed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

¹ 2008 (4) ALD 339 (DB)

9. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 14.12.2018

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