

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**C.R.P.No.4030 OF 2016**

**ORDER:**

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 19.04.2016 in I.A.No.291 of 2015 in O.S.No.66 of 2008 passed by the Senior Civil Judge, Hindupur, closing the application filed under Section 151 C.P.C. as infructuous in view of dismissal of I.A.No.186 of 2010 in O.S.No.66 of 2008.

The petitioner/defendant No.2 alleged in the affidavit that the 1<sup>st</sup> defendant in collusion with the plaintiffs and others have created, manipulated and forged his signature on the agreement of sale and filed the same into the Court with a view to have unlawful gain. In fact, the 1<sup>st</sup> defendant remained exparte and he is not contesting the matter. In order to prove that her signature was forged by the 1<sup>st</sup> defendant and the plaintiffs and others, she filed I.A.No.186 of 2010 to send the disputed signatures to the Forensic Laboratory, Hyderabad for comparison and expert opinion. The Court allowed the said application initially and ordered to send the disputed signatures with contemporaneous signatures for examination by the expert and opinion. Since the petitioner failed to furnish the documents containing contemporaneous signature, the said petition was dismissed. The petitioner filed I.A.No.291 of 2015 to send certain documents i.e. account opening form, specimen signatures obtained in the proforma by the Bank Manager from Canara Bank, Kalyannagar, Bangalore bearing S.B Account No.7530 to Forensic Laboratory, Hyderabad and compare

the signature with the admitted signature to unravel the truth in the matter.

The respondent filed counter denying the allegations *inter alia* contending that since the petitioner failed to furnish the documents containing contemporaneous signatures of the petitioner, I.A.No.186 of 2010 was dismissed and the petition filed to send certain documents would not serve any purpose. Thus, the specimen signatures on the proforma obtained by the bank Manager on the account opening form with the disputed signatures and the same was dismissed earlier in I.A.No.186 of 2010 and prayed to dismiss the petition.

Upon hearing arguments of both counsel, the Court below dismissed the petition on the ground that question of sending documents from the Bank Manager, Canara Bank, Bangalore is unnecessary as I.A.No.186 of 2010 was dismissed and thereby question of reference of the signatures of the petitioner along with disputed signatures to send for expert opinion, does not arise and thereby, the petition became infructuous and dismissed.

During hearing, learned counsel for the petitioner though reiterated the various grounds urged before the Court below, requested this Court to direct the Court below to exercise power under Section 73 of the Indian Evidence Act.

Learned counsel for the respondent opposed the petition on the ground that the purpose mentioned in the affidavit is totally different and now the petitioner cannot change his stand and seek the relief.

Order 13 Rule 10 C.P.C. deals with power of the Court to send for papers from its own records or from other Courts. But this provision has no application since the documents are sought to be send for from the Branch Manager of Canara Bank, Bangalore. However, in the absence of any specific provision, the Court can exercise inherent power under Section 151 C.P.C and pass such orders. But actually, the purpose for calling documents, is to send the documents to the Forensic Science Laboratory, Hyderabad for comparison of disputed signatures with the admitted signatures and for opinion. But now, learned counsel for the petitioner fairly requested this Court to exercise power under Section 151 C.P.C. and call for records at least for limited purpose under Section 73 of the Indian Evidence Act, enabling the Court below to compare the disputed signatures with admitted signatures. Such power can be sparingly exercised in exceptional circumstances. The purpose mentioned in the affidavit is different. Therefore, the order passed by the Court below is legal, but in view of the request made by learned counsel for the petitioner, during hearing, the Court below is directed to send for the documents from Canara Bank, Kalyannagar Branch, Bangalore, bearing S.B account No.7530 for the limited purpose of exercising power under Section 73 of the Indian Evidence Act and not for sending the admitted signatures to the expert in view of application filed in I.A.No.186 of 2010.

In the result, the civil revision petition is allowed setting aside the order dated 19.04.2016 in I.A.No.291 of 2015 in O.S.No.66 of 2008 passed by the Senior Civil Judge, Hindupur. However, the Court below is directed to call for the documents only

for limited purpose enabling the Court below to exercise power under Section 73 of the Indian Evidence Act.. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

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**M. SATYANARAYANA MURTHY,J**

31.01.2018  
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