

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

C.R.P.NO.736 OF 2014

ORDER:-

This revision petition is filed questioning the rejection of the application I.A.No.129 of 2011 in O.S.No.24 of 2009 on the file of the Court of Senior Civil Judge, Sompeta.

2. The petitioners in I.A.No.129 of 2011 are the defendants in a suit filed for recovery of money based on a promissory note. The defendants have taken a plea that the suit promissory note, which is marked as Ex.A-1, is a rank forgery. Therefore, when the evidence of chief examination of PWs.1 to 3 was filed in the court, the present application I.A.129 of 2011 was filed to send the document, namely Ex.A-1, to an expert for comparison of the signatures. The application was opposed by the plaintiff/respondent. After hearing both the learned counsel, the application was dismissed on the ground that the suit promissory note pertains to the year 2007 and the application is filed in the year 2011 and that there are no contemporaneous signatures available for comparison. This order that was passed on 22-07-2013 is impugned in the present revision petition.

3. This court has heard Sri K.Manik Prabhu, learned counsel for the petitioners and Sri M.Krishna Rao, learned counsel for the respondent.

4. The learned counsel for the petitioners submits that the dismissal of application is contrary to law and mere delay in filing should not be a ground to reject the application. He relies upon a judgment of the learned single judge of this court in *Penumastha Ramachandra Raju vs. Gaddam Raja Sekhar Reddy*<sup>(1)</sup> and argues that dismissal of an application on the ground of delay is not correct. He also submits that whether the signatures that are available are enough for comparison or not, is a matter for the expert to decide. He also submits that he is willing to produce the contemporaneous signatures of the petitioners at that point of time. Therefore, it is his endeavor to satisfy to this court that dismissal of application is bad in law.

5. In reply to this, the learned counsel for the respondent argues that the entire application is an abuse of process of court and is only filed to delay the matter. He submits that despite interim stay being granted in 2014 itself, till date the court is not proceeding with the matter. Therefore, it is his submission that applicants are succeeding in delaying the suit. He also prays that the revision petition should be heard and disposed of. He also relies upon a judgment of the learned single judge of this

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<sup>1</sup> 2005(6) ALT 49

court in C.R.P.No.4789 of 2018 and states that in similar circumstances the C.R.P was dismissed.

6. This court after hearing both the learned counsel is of the opinion that the judgment cited by the learned counsel for the respondent is not really applicable. In the case on hand, in the written statement a plea was taken that the promissory note is a rank forgery. The application is filed at the stage of cross examination of PWs.1 to 3. The suit was filed in the year 2009. Issues were framed on 09-12-2009 and thereafter the application was filed to send the document to an expert. A foundation has already been taken at the written statement that the suit promissory note is a forgery. Therefore, the petitioners have a right to send the same for an expert's opinion. Even in the judgment cited by the learned counsel for the respondent, the learned single judge of this court held that the lapse or delay in furnishing admitted signatures would not stop the trial court from ordering the petition. In the case on hand, the written statement, vakalat etc., are already available on the record of the court. Whether the signatures sent for comparison with the signatures on the promissory note are comparable or not or whether due to the lapse of time changes have occurred is a matter for the expert and for the court to decide when the report is finally furnished. On the ground that the delay has occurred evidence cannot be

shut out more so when it requires expert investigation. Therefore, this court is of the opinion that the judgment cited in *Penumastha Ramachandra Raju (supra)* is more applicable to the facts and circumstances of the case. The application that is filed is not really belated in the opinion of this court as it is filed at the stage of cross examination of the plaintiff's witnesses.

7. Therefore, this court is of the opinion that the dismissal of the application in I.A.No.129 of 2011 is not correct.

Accordingly, the Civil Revision Petition is allowed and the court below is directed to send the promissory note for an evaluation by an expert as per the procedure prescribed under law. The lower court is also directed to decide the matter on merits after the report is received without in any way being influenced what is stated in this order. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

14-11-2018  
TSNR

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D.V.S.S.SOMAYAJULU,J