

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

**CIVIL REVISION PETITION No.2072 OF 2011**

**ORDER:**

This revision petition, under Article 227 of the Constitution of India, is filed questioning the order dated 25.04.2011 in I.A. No.227 of 2011 in O.S. No.296 of 2006 passed by the Additional Senior Civil Judge, Tenali, whereby the learned Senior Civil Judge dismissed the interlocutory application filed under Section 148 of the Code of Civil Procedure, 1908 (for short 'CPC') to relax the condition imposed by the court and extend the time to deposit Rs.5,000/- towards expert fee for referring Ex.A.3-Will dated 20.03.2000 relied on by the petitioner to the Finger Print Bureau along with the admitted thumb impressions of Allam Kanakamma for comparison and opinion.

The petitioner filed I.A. No.1297 of 2007 under Rule 10-A of Order XXVI of CPC and Section 45 of the Indian Evidence Act, 1872 to refer Ex.A.3-Will to the Finger Print Bureau for the purpose of comparison with the admitted thumb impression in the Thumb Impression Register summoned in the suit. The learned Additional Senior Civil Judge allowed the application directing the petitioner to deposit an amount of Rs.5,000/- towards expert fee by order dated 11.02.2011. But the petitioner did not comply the direction issued by the court below and filed I.A. No.227 of 2011 under Section 148 of CPC to relax the condition imposed by the court below. The said petition was dismissed by order dated 25.04.2011. Aggrieved by the same, the present revision is filed on the ground that the petitioner is not aware of the order in I.A. No.1297 of 2007, the trial court did not exercise the jurisdiction conferred on it and relaxation of condition under Section 148 of CPC is purely discretionary order and that when

the trial court did not exercise its discretion that vested on it, the superior court can interfere with the order passed by the trial court while exercising jurisdiction under Article 227 of the Constitution of India. It is also contended that the reasons stated in the affidavit that the order was not communicated to the petitioner is suffice to relax the condition imposed by the court below exercising power under Section 148 CPC but the trial court committed grave error in dismissing the petition and prayed to set aside the order impugned in the revision.

It is an undisputed fact that the trial court passed an order to deposit an amount of Rs.5,000/- towards expert fee for referring Ex.A.3-Will dated 20.03.2000 relied on by the petitioner to the Finger Print Bureau along with the admitted thumb impressions of Allam Kanakamma for comparison and opinion, within the stipulated time, allowing the I.A. No.1297 of 2007 under Rule 10-A of Order XXVI of CPC and Section 45 of the Indian Evidence Act, but the petitioner did not comply the direction issued by the Court and failed to deposit the amount. Thereafter, the petitioner filed a petition to extend the conditional order in I.A. No.1297 of 2007. Since there are no tenable grounds, the said petition was dismissed. Again the petitioner filed I.A. No.227 of 2011 under Section 148 of CPC on the ground that the order in I.A. No.1297 of 2007 was not communicated, when once the court refused to relax the condition in the earlier application again filing of application to relax the condition on the same ground does not arise and it is nothing but an abuse of process of Court. Therefore, the trial court rightly exercised its discretion within its limits judiciously and such discretionary order cannot be interfered by this Court while exercising jurisdiction under Article 227 of the

Constitution unless the trial court failed to exercise jurisdiction that vested on it. Therefore, the order in I.A. No.227 of 2011 does not call interference of this court.

In **Raj Kumar Bhatia v. Subhash Chander Bhatia**<sup>1</sup> the Full Bench of the Apex Court, while following the judgment in **Sadhana Lodh v. National Insurance Company Ltd. & Anr.**<sup>2</sup>, held that in the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order.

When the trial court exercised its jurisdiction and passed an order in consonance with the law, this court cannot interfere with such order, as power conferred under Article 227 of the constitution of India is to keep the subordinate courts working under the control of the High Court within the jurisdictional limits not otherwise.

Therefore, I find no ground to set aside the order passed by the trial court. Consequently the revision is liable to be dismissed.

In the result, the civil revision petition is dismissed confirming the order dated 25.04.2011 in I.A. No.227 of 2011 in O.S. No.296 of 2006 passed by the Additional Senior Civil Judge, Tenali. No costs.

Consequently, miscellaneous petition, if any, pending shall stand closed.

**M.SATYANARAYANA MURTHY, J**

28.02.2018  
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<sup>1</sup> Civil Appeal No.19400 of 2017

<sup>2</sup> 2003(3) SCC 524