

HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CIVIL REVISION PETITION NO. 2 8 2 2 OF 2014

ORDER :

This Civil Revision Petition is filed by the petitioner/defendant questioning the order dated 30/07/2014 passed by the First Additional Senior Civil Judge, Rajahmundry, East Godvari district in I.A.No. 645 of 2011 in O.S.No. 539 of 2010, dismissing the application under section 73 and 45 of the Indian Evidence Act.

2. The suit is filed for recovery of money under a promissory note. After the defendant's evidence was recorded, the present application came to be filed to send the suit promissory notes Exs.A-1 to A-3 to a handwriting expert for comparison with the admitted signatures and for his opinion. The matter was contested and the application was dismissed. Questioning the said order, the present Civil Revision Petition is filed.

3. This Court has heard Sri Bolla Venkata Rama Rao, learned counsel for the Revision Petitioner and Sri Ilapakurti Chandrasekhar, learned counsel for the respondent.

4. The learned counsel for the Revision Petitioner points out that in paragraph No.3 of the written statement itself, the

defendant has taken a plea that the promissory notes are forged and fabricated.

5. In addition, the learned counsel also points out that during the cross-examination of DW-1/Revision Petitioner, he clearly denied his signatures on Exs.A-1 to A-3. He also denied the suggestion that Exs.A-1 to A-3 are executed by him in favour of the plaintiff. Therefore, the learned counsel submits that the petition should have been ordered. In addition, the learned counsel also points out that although the application was filed in the year 2011 and it was disposed of only on 30/7/2014. He points out that the matter was heard on 11/10/2011 and almost three years later, the application is dismissed.

6. He also relies upon a decision of this Court in **CHITYALGUNDAMEEDE RAMALAKSHMI V/s. EDIGA RANGAMMA (died)** by LRs ¹, wherein a learned single Judge of this Court held that if a plea is taken in the written statement that the suit document is forged, it would not be appropriate to dismiss the application to send the document to an handwriting expert only on the ground that it is filed belatedly.

7. In reply to this, the learned counsel for the respondent points out that the order passed by the lower court is a reasoned order. The learned counsel relies upon the findings in paragraph Nos. 9 and 10, wherein the Court noticed that the Revision Petitioner has taken two contradictory stands. On the one hand

¹) 2012 [6] A L D - 755

he states that the suit promissory containing his signatures were actually blank promissory notes given to the plaintiff. He states that the blank promissory notes containing the signature were misused by the present plaintiff. Initially he took the stand that there was a monetary transaction between him and the plaintiff's sister and for the said transaction, he executed a number of blank promissory notes. The Revision Petitioner, however, states that as the said debt was discharged the promissory notes were returned. Later, he again states that some promissory notes were retained by the plaintiff's sister and the same are fabricated by the plaintiff. Therefore, the learned counsel points out that the stand of the Revision Petitioner is ambivalent and is not clear at all. He points out that the distinction between '*forgery of a signature*' and the '*fabrication*' are lost sight of. In addition, the learned counsel also points out that the petitioner admits that he has transactions with Smt. Kottu Chellayamma, the sister of the plaintiff. Therefore, the learned counsel states that the application is filed belatedly only for the purpose of procrastinating and delaying the trial.

8. The point for consideration is, "whether the lower court was right in dismissing the application ? "

9. It is true that at one stage the defendant stated that the promissory notes are fabricated and later he stated that some promissory notes containing his signatures were mis-used. However, a reading of the entire evidence in its totality shows that the defendant ultimately stuck to his plea that the suit promissory

notes do not contain his signature. In the chief examination, he did take an ambivalent stand. But in the cross-examination, he clearly stated that the plaintiff's sister had three promissory notes which were returned to him by the plaintiff's sister, Smt. Kottu Chellayamma in the year 2006. Later the plaintiff was confronted with the signatures on Exs.A-1 to A-3 and he clearly stated that the signatures shown to him on Exs.A-1 to A-3 do not belong to him. He also volunteered to send the documents mentioned in his cross-examination to an expert for comparison with the suit promissory notes. Therefore, on a reading of the entire evidence, this Court is of the opinion that although there is some amount of ambivalence in the stand taken by the Revision Petitioner, in the ultimate analysis he has denied the signatures on Exs.A-1 to A-3.

10. This Court is of the opinion that the interest of justice require that the Revision Petitioner should be given an opportunity to send the documents to a handwriting expert. Therefore, the Civil Revision Petition is allowed. The Court below is directed to take all steps as per law to send the signatures to an handwriting expert for comparison and his opinion.

11. As the suit is of the year 2010, the court below should fix a strict time table and schedule for completion of the entire exercise. The expert should also be cautioned to give his report in a time bound manner. Any request for adjournment should be dealt with very firmly but in accordance with law.

12. With the above observation, the Civil Revision Petition is allowed. Needless to say the lower Court is directed to dispose of the matter without being influenced by what is stated in this order. Both parties shall bear their own costs.

13. As a sequel, miscellaneous applications if any, shall stand disposed of.

JUSTICE D.V.S.S. SOMAYAJULU

29/11/2018
I s L

N B : FURNISH C.C. TOMORROW.
B/o. I s L



HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU.

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(RESULT : ALLOWED)



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