

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.3477 OF 2017

ORDER:

Heard Sri N. Subba Rao, learned counsel for the revision petitioner, and perused the material on record.

2. The learned counsel would submit that in an application, I.A. No.625 of 2016 filed by the revision petitioner - defendant No.2 under Section 45 of the Indian Evidence Act, 1873, read with Section 151 of the Code of Civil Procedure, 1908, for obtaining opinion of the handwriting expert in relation to the disputed signature occurring on Ex.B-1, the learned Senior Civil Judge, Parchur, while dismissing it by the order dated 14.06.2017, made definite observations in paragraph No.7 of the order that he has already compared disputed signatures with that of the defendant's admitted signatures available on *Vakalathnama* and written statement and gave a definite finding that the disputed signatures are alike with the admitted signatures of the defendant occurring on the *Vakalathnama* and written statement, and, therefore, there is no necessity to send Ex.B-1 promissory note for the opinion of the handwriting expert would amount to prejudging the matter. The said order is under challenge in this revision petition.

3. No representation for the respondent, though, entered appearance.

4. Since the original suit relates to the year 2013, the present revision petition is taken up for disposal at the admission stage itself, though, the respondent is not represented.

5. Paragraph No.7, in which finding has been recorded by the Court below, is thus:

“7. The signature of the original borrower on the suit promissory note is at dispute, so, as to quell the controversy, assistance of hand writing expert sought, contending that the suit promissory note is forged in so far as subscribing the signature of the deceased defendant thereon. This Court has perused the signatures of the deceased defendant on original promissory note, so also the Vakalatnama given by him to his counsel. Further, this Court has also perused the signatures of the deceased defendant subscribed on written statement three in number. Added to this, the Court being a Court of facts also endowed with opportunity of verifying the signatures of the deceased defendant on the postal acknowledgment at the time of service of summons on him, so also the returned served summon of the said deceased defendant. And at the same time, this Court has also seen the signatures of the deceased defendant five in number said to have been obtained by the bank under Ex.B1. On cluster verification of the signatures of the deceased defendant on all the above documents, this Court could not find any discernible difference in so far as the strokes, pattern and style of the deceased defendant in putting his signature. In other words, there appears no significant changes in the signature of the deceased defendant with that of the one under promissory note,

to that of, the above signatures find place in various documents of the court proceedings. Thus, the endeavour of the counsel for the defendant in so far as seeking the reference of the suit promissory note to the hand writing expert appears to be of no avail, especially in those circumstances when the suit is of the year 2013, and that considerable evidence already adduced.”

6. Certainly, it amounts to prejudging the suit itself. The trial Court, in an interlocutory application, ought to exercise the power by invoking the powers under Section 73 of the Evidence Act as the last resort. Hence, the order under challenge suffers from legal infirmity and is liable to be set aside and, therefore, set aside.

7. So far as request in I.A. No.625 of 2016 is concerned, the same is to be allowed in view of the finding recorded in paragraph No.7 of the order under challenge, and, therefore, the same stands allowed. The trial Court is directed to refer the disputed signature(s) to the opinion of the handwriting expert, as requested.

8. With the above directions, the Civil Revision Petition is allowed. The parties shall bear their own costs.

9. As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision petition stand closed.

A. SHANKAR NARAYANA, J

March 23, 2018.
PV