

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3138 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.1343 of 2017 in O.S.No.25 of 2012 dated 09.04.2018 passed by the First Additional District Judge, Kadapa, dismissing the petition filed under Section 45 of Indian Evidence Act and Section 151 of C.P.C.

I.A.No.1343 of 2017 is filed under Section 45 of the Indian Evidence Act alleging that the petitioner raised a plea of forgery of signature on Exs.A-2 to A-6-pronotes and it is necessary to refer the disputed signatures of Exs.A-2 to A-6-pronotes for opinion of handwriting expert for comparison of the same with the signatures of the respondent obtained in open court. The respondent opposed the petition on various grounds. The Court below upon hearing arguments of both sides, observed that, suit was posted for arguments and at this belated stage, disputed signatures along with signatures obtained in the open court cannot be referred to handwriting expert for comparison and dismissed I.A.No.1343 of 2017.

Aggrieved by the order passed by the First Additional District Judge, Kadapa, the present civil revision petition is filed, mainly on the ground that, such relief can be claimed at any stage and placed reliance on the judgments **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu (died) and others¹** and

¹ 2016 (2) ALT 248 (FB)

Janachaitanya Housing Limited v. Divya Financiers² and in view of the law declared by Full Bench and Division Bench of this Court in the judgments referred supra, requested this Court to set-aside the order in I.A.No.1343 of 2017 in O.S.No.25 of 2012 dated 09.04.2018 passed by the First Additional District Judge, Kadapa.

During hearing, learned counsel for the petitioner reiterated the contentions urged in the grounds of revision. However, learned counsel for the respondent contended that the Court cannot refer the disputed signatures for comparison with the signatures obtained in the open court, as there is a gap of more than five years from the date of suit, till the date of filing petition, since there is a possibility of change in style of signatures, including change of writing for different reasons and requested this Court to dismiss the petition by confirming the order in I.A.No.1343 of 2017 in O.S.No.25 of 2012 dated 09.04.2018 passed by the First Additional District Judge, Kadapa.

The respondent filed O.S.No.25 of 2012 for recovery of amount due under the promissory notes dated 12.09.2010, 21.03.2011 & 21.03.2011. The defendant filed written statement on 29.06.2012 and additional written statement on 13.02.2017. In paragraph 9 of the written statement, the petitioner specifically raised a plea that the document sued upon are forged, while denying the very transaction itself and in the additional written statement, he again reiterated the plea of forgery of the documents sued upon. Thus, the consistent plea of the defendant from the beginning in the year 2012 is that the documents are forged. The

² 2008 (3) ALT 409 (DB)

petitioner maintained silence for all these years and suddenly filed I.A.No.1343 of 2017 in the year 2017 i.e after lapse of five years almost from the date of filing written statement and it is at the stage of arguments in the main suit.

Undoubtedly, as per the law declared in the judgments referred supra, the petitioner can seek such relief at any stage, including at the stage of arguments or first appeal or second appeal. But, the request made by the learned counsel for the petitioner is otherwise. The specific request made in the petition is to refer the disputed signatures on Exs.A-2 to A-6 along with the signatures obtained in the open court to the handwriting expert for comparison and opinion. As the promissory notes were allegedly executed in the year 2010 & 2011 and the present petition was filed in the year 2017 i.e. almost after seven years from the execution of alleged promissory notes, there is every possibility of change of signatures due to passage of time and there is every possibility to sign on the documents in disguise, so as to obtain a favourable opinion from the handwriting expert. But, what is required as per law is that, any authentic contemporaneous document containing signatures of the defendant has to be referred along with the disputed signatures for comparison and opinion. The contemporaneous documents might be the documents executed during 2010-11 alone, but not the signatures obtained after seven years from the date of alleged execution of promissory notes. This view is fortified by the judgment of this

Court in **Palle Chakrapani v. M. Prathap Reddy**³, wherein, this Court clearly held in paragraph 15 as follows:

“The other contention of the learned counsel for the petitioner is that there are certain interpolations in Ex.A1 i.e., the word “before” and the figure ‘1’ before “80,000-00” and with different ink i.e., interpolations can be found with a naked eye and the Court can examine the document and record its findings subject to raising plea of material alternations in the written statement. But the Court cannot order for examination of the disputed signatures with the admitted signatures on vakalat and written statement, which are not contemporaneous. Therefore, I find no grounds to interfere with the order impugned, by exercising the jurisdiction under Article 227 of the Constitution of India and consequently, the revision is liable to be dismissed.”

As the request made by the learned counsel for the petitioner is not for sending the admitted signatures of the defendant on contemporaneous documents, together with the disputed signatures on Exs.A-2 to A-6, the request cannot be accepted at this stage, as there is a possibility of change of signature due to passage of seven years of time from the date of alleged signature on Exs.A-2 to A-6.

This court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate courts or the tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep

³ 2017 (5) ALD 4

them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- “a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.”

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;

- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised *suo motu*. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**⁴ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

⁴ AIR 2005 SC 3820

Hence, I find no ground to interfere with the finding recorded by the Court below, except to reverse the finding that delay is not a ground to send the disputed signatures on the documents for handwriting experts for comparisons.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:03.08.2018

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