

***THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CIVIL REVISION PETITION No.3592 of 2018

% 27.06.2018

Between:

Kunamneni Nageswara Rao

....Petitioner

and

Kunamneni Dasaradharamaiah,
And another.

....Respondents

Counsel for petitioner: Sri K.Ananda Rao

Counsel for the Respondents : ---

(C.R.P. is disposed of at the stage of admission)

< Gist:

> Head Note:

?Citations:

1. 2017 (3) HLT 594
2. 2017 (1) HLT 715
3. 2016 (2) ALT 248 (FB)
4. 2008 (3) ALT 409 (DB)



THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3592 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner-unsuccessful first defendant, assailing the order, dated 07.05.2018, of the learned Junior Civil Judge, Parchur, passed in I.A.No.157 of 2018 in O.S.No.62 of 2011, whereby the learned Junior Civil Judge allowed the aforestated Interlocutory Application filed by the first respondent herein/plaintiff for sending the document with the disputed signatures, namely, suit contract of sale, dated 28.08.2003, along with the vakalat & written statement of the first defendant and also the registered sale deed, dated 16.09.2011, containing his signatures to a handwriting expert of A.P.Forensic Science Laboratory, Amaravathi, for comparing the disputed signatures on the said contract of sale with the signatures said to be admitted on the aforestated documents and for furnishing an opinion along with a report to the Court.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner/first defendant ('first defendant' for short). I have perused the material record.

3. The introductory facts, in brief, are as follows:

The plaintiff brought the suit for specific performance of the aforestated contract of sale, dated 28.08.2003. The first defendant, having entered appearance, filed his written

statement disputing his signature/s on the said contract of sale. After trial, the plaintiff filed the aforestated Interlocutory Application and the same was resisted by the first defendant. However, the trial Court, by the impugned order, allowed the said application and directed to send the disputed contract of sale, dated 28.08.2003, to the handwriting expert, F.S.L., Amaravathi, for comparison of the admitted and disputed signatures of the first defendant and called for his report along with his opinion. Aggrieved thereof, the first defendant is before this Court.

4. The first defendant, in the grounds, and the learned Counsel, during his submissions, raised two contentions. Firstly, it is urged that the approach of the plaintiff is a laidback approach, as his present request made at the conclusion of the trial to send the documents to the handwriting expert for his opinion is highly belated, and therefore, the trial Court was in error in granting the said request. Secondly, it is sought to be contended that the contract of sale is of the year 2003 and that, the suit was instituted in the year 2011; that the signatures of the first defendant on the vakalat & the written statement and also on the deed of sale are of the year 2011, and therefore, the said signatures of the first defendant, which the plaintiff wants the expert to consider as standard signatures for comparison with the disputed signature/s, are not of contemporaneous period; therefore, the trial Court ought not to have considered the request of the plaintiff.

5. Dealing with the contentions, it is to be noted that the learned counsel for the petitioner placed reliance on the following decisions of this Court. The decision in **Dhatla Lakshmipathi Raju v. P.Venkata Ramana**¹, is relied upon in support of the proposition that a belated application filed for sending the documents to an expert for an opinion is not entertainable. The decision of this Court in **P.Padmanabhaiah v. G.Srinivasa Rao**² is relied upon in support of the proposition that, when the signatures, which are to be compared with the disputed signatures, are not of a contemporaneous period, the request for obtaining an opinion from the expert based on such signatures shall not be considered.

6. I have gone through the decisions cited. I have given earnest consideration to the submissions.

7. In the considered view of this Court, the two contentions and the issue raised in the revision do no merit consideration, as the issue involved is no longer *res integra*, in view of the decision of the Full Bench of this Court in **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu (died) per LRs**³.

8. It is to be noted at the outset that this is not a case where the first defendant having filed his vakalat and written

¹ 2017 (3) HLT 594

² 2017 (1) HLT 715

³ 2016 (2) ALT 248 (FB)

statement is making a request to send the said documents to an expert for comparing the signatures thereon with the signatures said to be of him on the suit document which he is disputing. In this case, the plaintiff is making a request to send the vakalat and written statement containing the signatures of the first defendant and also the contract of sale said to be containing the signature/s of the first defendant to an expert for *inter se* comparison and furnishing a report to the Court. If the first defendant files his vakalat and written statement and makes a request to send the said documents to an expert for comparison of the signatures thereon with the disputed signatures of his on the suit documents, the plaintiff may have reason to object for considering such signatures on the vakalat and written statement of the first defendant as admitted and/or standard signatures, if the plaintiff has any apprehension that the first defendant might have signed vakalat and written statement after designedly disguising or altering his signatures with an intention to defeat the claim of the plaintiff. In such a case, the Court may be slow in accepting the request of the first defendant and may call the first defendant to produce documents of authentic nature, if any, containing his signatures, or may even refuse to exercise the discretion in favour of the first defendant, who makes the request for seeking an opinion of the expert, keeping in view the apprehension of the plaintiff which may sound reasonable and appear well founded in the facts & circumstances of the case. But, if the

plaintiff himself makes a request in this regard by stating that the signatures of the first defendant on the written statement and vakalat and other documents can be considered as standard signatures for comparison with the disputed signatures, then the first defendant cannot be heard to say that such a request of the plaintiff cannot be considered; and, in such a case, it is for the Court dealing with the matter to exercise its discretion judiciously either way having regard to the facts & circumstances of the case.

9. Dealing further with the first contention, be it noted that in a decision in **Janachaitanya Housing Limited v. Divya Financiers**⁴ rendered by a Division Bench of this Court upon a reference made by a learned Single Judge of this Court on the question as to whether an application under Section 45 of the Indian Evidence Act, 1872, for expert opinion on disputed signatures could be entertained at a later stage of the suit, including at a stage when the suit was coming up for arguments after the entire trial, the Division Bench, upon due consideration of the case law on the point and the judicious discretion which vests with the Court, answered the reference as under:

“For the reasons aforementioned, we answer the reference thus: “No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signatures or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the court; for exercising such discretion when exigencies so

⁴ 2008 (3) ALT 409 (DB)

demand, depending upon the facts and circumstances of the each case.”

In the case on hand, the trial Court, having exercised its discretion, considered the request of the plaintiff, though it was made at a late stage in the matter. This Court, on facts, finds no grounds calling for interference with such discretion which was judiciously exercised by the trial Court.

10. The second set of contentions of the first defendant is that he is disputing the signatures said to be of his on the suit contract of sale and hence, the said signatures, which he is disputing, on one hand, and that his signatures on his vakalat and written statement on the other, are not of comparable standard being not of a contemporaneous period. Nonetheless, the Full Bench of this Court in **Bande Siva Shankara Srinivasa Prasad**’s case (3rd supra) answered the said aspect as follows:

“It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted

handwriting/signature are capable of comparison for a viable expert opinion...”

Thus, the Full Bench of this Court held that there can be no hard and fast norms as to when comparison can or cannot be undertaken owing to the time lag between the two sets of handwritings/signatures and that it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwritings/signatures and the admitted handwritings/signatures are capable of comparison for a viable expert opinion. In that view of the matter, it is not for the first defendant to say that the signatures on his vakalat and written statement as well as the registered sale deed are of comparable standard or not, and it is for the expert to voice an opinion on the said aspect at an appropriate stage of the matter. Therefore, this Court finds that the above stated contentions of the first defendant do not merit consideration being devoid of merit.

11. In the considered view of this Court, if the two sets of signatures are sent to an expert and his opinion is obtained, though it may be in the nature of opinion evidence, yet, it will be one more additional piece of evidence, which may be of considerable assistance to the trial Court not only in assessing the entire evidence including the other evidence, which the parties may let in during the course of trial, but also in arriving at a just decision in the matter.

12. On the above analysis, this Court holds that the Civil Revision Petition is liable to be dismissed. And, the same is, accordingly, dismissed.

Miscellaneous petitions pending, if any, in this Civil Revision Petition, shall stand closed.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

27.06.2018

Note: LR copy to be marked.

B/o.
vs

