

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4996 of 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, assailing the order dated 30.8.2017 passed in I.A.No.265 of 2017 in O.S.No.111 of 2017 on the file of the Court of Principal Junior Civil Judge, Kovvur, West Godavari District.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that the respondent herein filed I.A.No.265 of 2017 under Section 45 of the Indian Evidence Act to send disputed signature on Ex.A.1-promissory note dated 06.9.2014 along with respondent's signatures to be taken in the open court to the Handwriting Expert for comparison and report. The petitioner herein filed counter *inter alia* contending that the petition is not maintainable under law. The trial Court, after affording reasonable opportunity to both the parties, allowed the petition. Hence, the revision.

4. The point that arises for consideration in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

5. A perusal of the record reveals that the petitioner filed O.S.No.111 of 2017 on the file of the Court of the Principal Junior Civil Judge, Kovvur, against the respondent, for recovery of the suit amount, basing on Ex.A.1-promissory note, dated 06.9.2014. During the pendency of the trial, the respondent filed I.A.No.265 of 2017 under Section 45 of the Indian Evidence Act to send the

disputed signature on Ex.A.1-promissory note along with respondent's signatures to be taken in the open court to the Handwriting Expert for comparison.

6. The learned counsel for the petitioner submitted that the respondent may change his signatures, in order to overcome the legal consequences to be faced by him if he properly put his signatures. He further submitted that the trial Court, without taking into consideration this aspect, simply allowed the petition. To substantiate the argument, he has drawn the attention of this Court to paragraph No.20 of the judgment of this Court in **Sallepalli Narasimha Reddy v Yerram Pedda Subba Reddy**¹, which reads as follows:

20. Let me consider the facts of the case on hand, in the light of the above principles. The suit promissory note is dated 30.3.1997. The signatures of the defendant were taken in open court on 07.11.2001 to send the same for comparison with his disputed signature on Ex.A1 promissory note dated 30.3.1997. This factual aspect clearly manifest that the contemporary signatures of the defendant were not sent to the expert for comparison. It is not in dispute that the signatures of the defendant on the bank passbook or passport or sale deed were not sent to the expert for comparison. The court shall not lose sight of the relevant facts, in order to appreciate the rival contentions. Prior to 07.11.2001, the defendant was very much aware that he has taken a specific plea in the written statement that Ex.A1 does not bear his signature. Therefore, the court has to take into consideration the tendency of a human being in getting over the situation adverse to him. In such circumstances, the possibility of changing pattern and style of the signature by the defendant, while putting his signature in open court, to distinguish his usual signature cannot be ruled out completely, so as to substantiate his stand in the written statement.

7. The facts of the case on hand are almost identical to the facts of the case cited supra.

8. It is needless to say that any opinion expressed by the Expert is not a substantive piece of evidence. While allowing or

¹ 2014 (2) ALD 195

dismissing the petitions of this nature, the Court has to assign reasons much less cogent and valid reasons to its findings. The trial Court has not assigned any reasons for sending disputed signature on Ex.A.1-promissory note along with the signatures of the respondent herein to be taken in the open court to the Handwriting Expert for comparison. The trial Court simply allowed the petition observing that, *"I feel it is just and necessary to allow the petition for just decision of the main suit"*. The trial Court has not considered whether sending of disputed signature on Ex.A.1-promissory note along with the signatures of the respondent to be taken in the open court to the Handwriting Expert for comparison will throw any light on the controversy involved in the suit. The trial Court, without assigning any reasons, allowed the petition. If the impugned order is allowed to stand, it would certainly amount to miscarriage of justice.

9. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of considered view that it is a fit case to allow the revision petition.

10. In the result, the civil revision petition is allowed, setting aside the order dated 30.8.2017 passed in I.A.No.265 of 2017. Consequently, I.A.No.265 of 2017 in O.S.No.111 of 2017 on the file of the Court of Principal Junior Civil Judge, Kovvur, West Godavari District stands dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 18.9.2018

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