

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4998 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner - defendant assailing the order, dated 03.08.2018, of the learned Principal Junior Civil Judge, Kovur of SPSR Nellore District, passed in IA.No.410 of 2018 in OS.No.228 of 2016.

2. I have heard the submissions of Sri J Pradeep Kiran, learned counsel appearing for the revision petitioner-defendant ['the defendant', for short] and of Sri T.D. Pani Kumar, learned counsel appearing for the respondent –plaintiff ['the plaintiff', for short]. I have perused the material record.

3. To begin with, it is to be noted that in a suit for recovery of money on the foot of a promissory note, the defendant, who is resisting the suit of the plaintiff, at the conclusion of the trial and when the suit is at the stage of arguments, filed the instant Interlocutory Application, under Section 45 of the Indian Evidence Act, requesting to obtain the handwriting of the plaintiff in open Court and send the said handwriting of the plaintiff along with exhibits B1 & B2 to the State Forensic Science Laboratory, for comparison of the two sets of hand writings of the plaintiff viz., the standard handwriting taken in open Court and the disputed handwriting in exhibits B1 & B2, by a handwriting expert of the said Laboratory and furnishing an opinion along with a report as to the genuineness or otherwise of the disputed handwritings said to be of the plaintiff in exhibits B1 & B2 in the interests of justice. The said application was resisted by the plaintiff by filing a counter. On merits and by the order impugned in this revision, the trial Court dismissed the application of the defendant. Hence, the defendant is before this Court.

4. The case of the defendant, in brief, is this: - 'The suit is filed for recovery of money on the foot of a promissory note, dated 23.11.2013. The defendant is contesting the suit, *inter alia*, stating that the plaintiff created transactions in his name and in the name of his brother and others. To prove the defence, the defendant filed diary and note book maintained by the defendant and his wife wherein the plaintiff noted the transactions in his own handwriting. The plaintiff denied the said writings in the said diary and book when the same were shown to him in his cross examination. The same were marked as exhibits B1 & B2. As the plaintiff denied his writings in the said exhibits B1 & B2, which were shown to him, it is just and necessary to send the hand writings in exhibits B1 & B2, which are being disputed by the plaintiff, to an expert along with the admitted handwriting of the plaintiff, which may be taken in open Court, for comparison and furnishing the report with an opinion as to the genuineness or otherwise of the handwritings of the plaintiff in exhibits B1 & B2 in the interests of justice as the said evidence of the expert would clinch the issue.'

5. The case of the plaintiff is this: 'Exhibits B1 & B2 are not suit documents. Any opinion of the handwriting expert would not help to come to a just conclusion on the issue involved in the suit. There is no need to send the exhibits B1 & B2 to an expert for comparison of the alleged handwritings therein with the admitted handwritings of the plaintiff. The petition is filed to delay the proceedings. Hence, the petition is liable to be dismissed.'

6. Learned counsel for the defendant has first drawn the attention of this Court to the following defence in the written statement: 'The defendant's wife used to run unregistered chits under the name and style of 'Om Sri Sai Chits'. One Sujathamma of Mahila Podupu Bank of Leguntapadu brought one Girijamma, daughter of Gunupati Ramachandra Reddy of Leguntapadu, Gunupati Himaja and Gunupati Mahitha, who are daughter and daughter-in-law

of Girijamma, to the house of the defendant to join as subscribers of a chit in the year 2010, being run by the wife of this defendant. The said Gunupati Himaja is the daughter-in-law of Gunupati Vijaya Kumar Reddy. Since then they are continuing as subscribers of chits and subsequently they had transactions in the names of some other persons including those of one Ch.Pama, T.Revathamma and Anuradha and others. Mahitha and Himaja used to pay subscription amounts and bid at the chit auctions and used to take the bid amounts from the wife of the defendant. The plaintiff used to lend amounts to villagers; and, he also used to lend amounts through the wife of this defendant to third parties. In that process plaintiff approached the wife of the defendant, on 23.11.2013, saying that an amount of Rs.5,00,000/- is available with him and asked the defendant to lend the said amount to needy persons. At that time the above said Gunupati Himaja has taken the said amount, on 23.11.2013. In view of political rivalry in between the families of Jetty people and Gunupati people, the plaintiff asked this defendant and his wife to execute promissory notes for Rs.5,00,000/- each for Rs.1,00,000/- and obtained signatures on blank promissory notes. One such promissory note was obtained from the wife of this defendant and four such blank promissory notes were obtained from this defendant. [reproduced verbatim]’.

6.1 He next submitted as under: - ‘It is also specifically pleaded that the plaintiff used to collect interest @ 30% per annum on Rs.5,00,000/- i.e., @ Rs.12,500/- every month regularly and that on 23.07.2014 a sum of Rs.2,00,000/- was paid towards discharge and that hence, since 23.08.2014 sums @ Rs.7,500/- are being taken towards interest and that the interest is paid till 23.11.2014 and that the said payments related to payment & receipt of interest with dates are endorsed by the plaintiff in his own hand writing in the diary/ book being maintained by the wife of this defendant. Apart from the above said Rs.5,00,000/-, the plaintiff had also lent Rs.3,00,000/-, on

18.04.2014, and a sum of Rs.7,00,000/-, on 01.06.2014, on thandal basis and that signatures were obtained on blank promissory notes. The plaintiff also filed a suit in OS.No.227 of 2016 against the wife of this defendant by using empty promissory notes obtained by him from this defendant and his wife. No consideration passed under the suit promissory notes. The wife of this defendant filed a pocket diary maintained by her and the Photostat copy of OP ticket given by Government General Hospital, Nellore, to substantiate the above and other defence, which is pleaded in the written statement. In view of the above defence, it is clear that the defendant and his wife, in the two suits respectively filed against them, have taken a plea of discharge. The said plea of discharge is evident from the noting of payments made by the plaintiff in his own handwriting in the diary and book maintained, which are marked as exhibits B1 & B2. However, when the writings in exhibits B1 & B2 are confronted to the plaintiff, he denied the same though they are in his own handwriting. Hence, the present application is filed. However, the trial Court erroneously dismissed the petition only on the ground that the application is belatedly filed and that the defendant kept quiet till completion of recording of the evidence. The trial Court also erroneously observed that almost the trial of the suit is at the fag end and hence, it sees no grounds to grant the relief to the petitioner. The trial Court also observed that the opinion of the handwriting expert is not conclusive and that the defendant failed to take appropriate steps immediately after filing of the written statement and, therefore, it is not necessary to call for an opinion of an expert. The obtaining of the report of the expert is essential to substantiate the defence of the defendant herein and also the defence of his wife in the other suit and the defence cannot be satisfactorily established unless such an opinion is called for, as the plaintiff falsely denied the handwritings in exhibits B1 & B2.'

7. Learned counsel for the plaintiff, while reiterating the defence stated in the counter and while supporting the orders of the trial Court, further contended that the application is filed only to delay the proceedings and prayed for dismissal of the revision petition stating that the revision petition is devoid of merit. He forcefully contended that the defendant did not produce any documents with the admitted handwriting of the plaintiff and that if the plaintiff is asked to give his own handwriting in open Court and if such writing is to be compared with the disputed alleged handwritings in exhibits B1 & B2 no useful purpose would be served.

8. I have given earnest consideration to the facts and submissions.

9. As per the settled legal position, it is essentially within the judicious discretion of a Court, depending upon the individual facts and circumstances of the case before it, to seek or not to seek an expert's opinion as to the genuineness or otherwise of the contents of a document. A Division Bench of this Court in *Janachaitanya Housing Limited v. Divya Financiers*¹ rendered a judgment 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 Act of 1872 requesting to call for an expert's opinion on disputed signatures could be entertained at a later stage of the suit, including when the suit was coming up for arguments, after the entire trial. In the said decision, the Division Bench 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 signature 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 demand, depending upon the facts and circumstances of the each case.' Before proceeding further, it is trite to refer to the Full

¹ 2008 (3) ALT 409 (DB)

Bench decision of this Court in *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and others*² wherein the legal position is settled. The Full Bench answered the reference thus:

"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. The view expressed by the Division Bench in *Janachaitanya Housing Limited v. Divya Financiers* [2008 (3) ALT 409 (DB)], as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue."

10. As already noted, the judicious discretion must be exercised depending upon facts and circumstances of the individual case. Keeping in view the above stated legal position, it is to be now examined as to whether the defendant made out valid and sufficient grounds to consider his request and whether the order passed by the Court below is sustainable in the facts and circumstances of the case.

11. Admittedly, the suit is filed by the plaintiff for recovery of money on the foot of a promissory note. The defendant in his written statement while adverting to certain money transactions between the plaintiff on one hand and the defendant & his wife on the other *inter alia* contended that Rs.2,00,000/- was paid towards discharge of the amounts lent by the plaintiff and that earlier

² AIR 2016 AP 118 (FB)

to the said discharge Rs.12,500/- per month was being collected by the plaintiff towards interest and that after such part payment of Rs.2,00,000/-, Rs.7,500- was collected from the defendant/ his wife towards interest and that the payments & receipts related to the money transactions are noted by the plaintiff in his own handwriting in the pocket diary and note book maintained by the defendant and his wife, which are exhibited as exhibits B1 & B2. The said handwritings in exhibits B1 & B2, according to the defendant, support his defence plea of discharge. It is also the case of the defendant that when these handwritings in the said exhibits B1 & B2 were confronted to the plaintiff during his examination, he denied the same and hence, it has become necessary to request the Court to obtain an expert's opinion as to the genuineness or otherwise of the handwritings of the plaintiff in exhibits B & B2 by sending to the handwriting expert of the State Forensic Science Laboratory the said exhibits along with the admitted handwriting of the plaintiff, which may be taken in open Court; and, hence, the petition is filed. The only defence of the plaintiff is that no purpose would be served if the handwriting of the plaintiff taken in open Court is compared by an expert with the disputed writings in exhibits B1 & B2 and that the petition is belatedly filed.

12. In view of the contention of the defendant that the handwritings in exhibits B1 & B2 being relied upon by the defendant are that of the plaintiff and that as the said hand writings are denied by the plaintiff during his cross examination, if an expert's opinion, as desired by the defendant, is obtained, there will be one more assured piece of evidence, which will be helpful to the Court below, in appreciating and evaluating the evidence already brought on record. The expert's opinion, if called for, would also help the Court in more ably exercising the power of comparison under Section 73 of the Evidence Act at the appropriate stage. Be it noted that the learned counsel for the defendant contends that when the defendant is asserting that the relevant

handwriting in exhibits B1 & B2 is that of the plaintiff and when the plaintiff is denying the same, if the defendant fails to avail an opportunity to make a request to obtain an expert's opinion and in the event of the defendant becoming unsuccessful in the suit, there is every likelihood of a comment being made by an appellate Court that the defendant did not avail the opportunity of filing an application for seeking an expert's opinion, when the matter was before the trial Court. In *State v. Pali Ram* [(1979) 2 SCC 158], the Supreme Court held that although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting, which forms the sheet anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. In the said decision, it is also held that it is not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert. In *Velaga Sivarama Kirhnsa v. Velata Veerabhadra Rao* [2009 (1) ALT 379], this Court also held that an expert's opinion would help the Court in exercising power of comparison under Section 73 of the Evidence Act. Apart from the fact that the legal position, which squarely applies to the facts of the case and which supports the instant request of the defendant, it is to be noted that the defence as regards the plea of discharge rests upon the question as to whether the handwriting in exhibits B1 & 2 is that of the plaintiff or not.

13. On the above analysis, this Court finds that this is a fit case to grant the request of the defendant. This view of this Court finds support from the decision in *Mudi Reddy Tirupathi Reddy v. T. Linga Reddy and another* [2015 (6) ALT 512] wherein this Court, having found that the entire case rests on

genuineness of a disputed document, observed that the trial Court ought not to have rejected the application filed by the petitioner to refer the same to a handwriting expert. For the afore-stated reasons, this Court further finds that the trial Court is not right in not considering the request of the defendant to send the disputed handwritings in exhibits B1 & B2 to an expert on the mere ground that the application was filed at the fag end of the trial. As already noted, as per the settled legal position, the request of this nature need not be rejected on the ground of delay. Therefore and for the reasons afore-stated, the order impugned brooks interference.

14. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, IA.No.410 of 2018 in OS.No.228 of 2016 on the file of the Court of the learned principal Junior Civil Judge, Kovur, SPSR Nellore is allowed. As a sequel to this order, the trial Court shall do the needful in the matter by following the procedure established by law. The trial Court in its discretion may also direct the plaintiff to produce any documents of the contemporaneous period containing the handwriting of the plaintiff and consider sending the same also to the expert besides handwriting of the plaintiff that may be taken in open Court. Since the suit is at the fag end of the trial by the time of these interlocutory applications, which are allowed by this Court are filed, it is needless to state that the trial Court shall expedite the process of obtaining an opinion from the handwriting expert as stated in these orders and endeavor to dispose of the suit, as expeditiously as possible and preferably within two (02) months from the date of obtaining of the report of the expert. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

31.10.2018
Vjl

M. SEETHARAMA MURTI, J