

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4551 OF 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the order dated 25.07.2017 in I.A. No.395 of 2017 in O.S. No.155 of 2010 passed by the Senior Civil Judge, Chirala, Prakasam District, whereby the learned Senior Civil Judge dismissed the petition filed under Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC').

The petitioner is the defendant in main suit. He filed I.A. No.1552 of 2015 to send Ex.B.1 along with handwriting of the plaintiff obtained in the Court. The said petition was allowed on 17.02.2016 while directing the plaintiff to appear before the Court on the next date of adjournment to give his specimen handwriting. But he did not turn up and the suit was posted to 10.11.2016; on that day the petitioner/defendant and the plaintiff were present, but the court instead of taking specimen handwriting of the plaintiff, closed the same as the counsel for the defendant was not present and in fact, he was out of station on that day. Therefore, there are no wilful latches and requested to set aside the order dated 10.11.2016 and refer Ex.B.1 along with specimen handwritings of the plaintiff obtained in the Court to the expert for opinion.

The respondent filed counter denying the material allegations *inter alia* contending that he was present on 10.11.2016 while denying the allegations made in the affidavit, but the petition was closed on 10.11.2016 without obtaining his specimen handwriting. In

view of the absence of the counsel for the petitioner herein and that the suit was filed for recovery of money based on promissory note and the part payment was also made, the order under challenge cannot be set aside on any of the grounds.

Notice was served on the respondent and proof of service is filed, but none appeared for the respondent.

During hearing, learned counsel for the petitioner reiterated the contentions while referring the contents of the order that the mistake was on the part of the Court, neither mistake of the petitioner nor the respondent and in fact appearance of the Advocate is not necessary and it is purely an administrative act. Closure of the petition due to absence of the counsel for the petitioner herein is an illegality and prayed to set aside the order.

As seen from the contents of the affidavit, the petitioner/ defendant filed I.A. No.1552 of 2015 to refer Ex.B.1 along with specimen signature or handwriting of the respondent/ plaintiff obtained in the Court and the said petition was allowed by the court, posted the suit for obtaining handwriting of the respondent/ plaintiff on 24.03.2016. But the respondent/ plaintiff did not turn up on that day and again posted to 10.11.2016, but due to absence of the counsel for the defendant, the trial court closed the petition, the order passed by the court is illegal, since the appearance of the counsel of the defendant is not necessary on the day to obtain specimen signature or handwriting of the respondent/ plaintiff on 10.11.2016, and closure of the petition is an illegality committed by the court.

Hence the order passed by the court below is hereby set aside while directing the trial court to obtain specimen handwriting of respondent/ plaintiff within 15 days from the date of receipt of a copy of this order and refer Ex.B.1 along with handwriting of the respondent/ plaintiff to the State Forensic Science Laboratory, Andhra Pradesh and proceed with the trial of the suit in accordance with the receipt of report from the Laboratory.

With the above direction, the civil revision petition is allowed.
No costs.

Consequently, miscellaneous petition, if any, pending shall stand closed.

13.03.2018
BV

M.SATYANARAYANA MURTHY, J

