

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION Nos. 5295 and 5329 of 2018

COMMON ORDER:

The revision petitioner in these two revisions is the unsuccessful plaintiff. In view of the commonality involved in the subject matter, both these revisions are heard together and are being disposed of by this common order.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('plaintiff', for brevity) and of the learned counsel for the respondents/defendants ('defendants', for brevity).

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: The plaintiff instituted O.S.No.177 of 2008 on the file of the learned Junior Civil Judge, Venkatagiri, for specific performance of contract of sale, dated 29.10.1985. The defendants filed a written statement resisting the suit. During the pendency of the suit, the second defendant filed I.A.No.265 of 2015 under Section 45 of the Indian Evidence Act, 1872, read with Section 151 of the Code of Civil Procedure, 1908, requesting to send the suit contract of sale, the signatures on which are disputed, to a handwriting expert for comparison of the signatures said to be of the defendants thereon with the admitted signatures. That application was also

resisted by the plaintiff. The trial Court, by an order, dated 03.03.2016, allowed the said application and directed the suit contract of sale (Ex.A.1) to be sent to the expert for his opinion as to the genuineness of the signatures thereon; and, the trial Court simultaneously directed the defendants to produce documents containing their signatures of a contemporaneous period to enable the expert to furnish an opinion to the Court along with a report after comparing the disputed signatures on the disputed document with the signatures on such documents, which are directed to be produced by the defendants. Pursuant to the said order, the documents were sent to the expert. But, the expert, it appears, has returned the same with his observation that the documents [with the signatures], which are sent for comparison with the disputed signatures on the disputed document, are not of a contemporaneous period. Therefore, the present Interlocutory Applications i.e., I.A.No.299 of 2017 and I.A.No.132 of 2018 were filed by the defendants, one to reopen the suit to enable the defendants to file fresh documents, as desired by the expert of the Forensic Science Laboratory and another to permit the defendants to summon the Branch Manager, Primary Agriculture Cooperative Society (PACS), Venkatagiri, to produce documents containing the signatures of the first defendant related to the transaction *vide* G.No.592 of the said PACS. The defendants also produced a passbook related to the said transaction along with the

Interlocutory Application that was filed for summoning the relevant documents from the PACS.'

4. Both the Interlocutory Applications aforesaid were opposed by the plaintiff by filing counters. In the counter filed in I.A.No.299 of 2017, the plaintiff stated as follows: 'There is no truth in the defence of the defendants. The suit was posted to 26.06.2015 for adducing evidence on the side of the defendants. The affidavit in lieu of examination-in-chief of one of the defendants was filed on 03.08.2015. However, the said witness did not appear before the Court for facing cross-examination. Subsequently, the matter was adjourned thrice. In the cross-examination, DW1 has already stated that no documents with his signatures of a contemporaneous period are available for sending them to the expert for obtaining opinion. There is another matter in E.A.No.59 of 2016 in E.P.No.173 of 2010 in O.S.No.69 of 2009 on the file of the learned Junior Civil Judge, Venkatagiri, related to a money transaction based on a promissory note. There is also another suit O.S.No.122 of 2016 for partition and separate possession, which is a collusive suit filed by sons of one of the defendants. The other litigations are created as a sequel to the present litigation. The present suit is of the year 2008. The defendants are protracting the litigation on one pretext or the other. The prayers in the Interlocutory Applications are not *bona fide*. Hence, the applications may be dismissed.'

5. By the orders, which are impugned in these revisions, the trial Court allowed both the Interlocutory Applications of the defendants and accordingly reopened the evidence and permitted to take summons to the Branch Manager, PACS, for production of the documents related to transaction *vide* G.No.592, as desired by the defendants.

6. Aggrieved thereof, these revisions are filed.

7. Learned counsel for the petitioner/plaintiff, while reiterating the case of the plaintiff, which is already adverted to *supra*, urged as follows: The present applications to reopen the evidence and to summon the documents from the PACS are only filed to protract the suit, which is of the year 2008. In the copy of the passbook, which is filed along with I.A.No.132 of 2018, which is filed for production of the documents from PACS, the column related to the signature is left blank. Further, in view of the admission in the cross examination that no documents, with the signatures, of a contemporaneous period are available and as it is not stated as to which period the transaction G.No.592 of the PACS relates to, the trial Court ought not to have allowed the Interlocutory Applications filed by the defendants. Hence, the revisions may be allowed and the impugned orders may be set aside.

8. Learned counsel for the respondents/defendants while supporting the orders impugned in these revisions contended

that the trial Court had already allowed the application of the defendants and permitted the defendants to send to the expert, the disputed contract of sale- Ex.A.1 along with other documents containing the signatures of the defendants, which are of a contemporaneous period, and that these applications are only filed as a sequel to the earlier orders and to fulfil the requirement of the expert who stated that documents of a contemporaneous period are necessary for comparison and therefore, the trial Court rightly allowed both the Interlocutory Applications and that the revisions are devoid of merit.

9. It is to be noted that the trial Court having regard to the facts and circumstances of the case was of the view that the instant case is a fit case to exercise discretion and seek an opinion of the expert as to the genuineness of the exhibit A1. However, the expert expressed a view that the documents with signatures of a contemporaneous period are required for furnishing an opinion. Hence, the defendants filed the subject interlocutory applications requesting to issue summons to a witness of the Primary Agriculture Cooperative Society (PACS), Venkatagiri, to produce documents containing the signatures of the first defendant related to the transaction *vide* G.No.592 of the said PACS. The trial Court allowed the said applications by the orders impugned. Before proceeding further it is trite to refer to the Full Bench decision of this Court in *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu*

and others¹ wherein the legal position is settled. In this decision the reference was answered as under by the Full Bench.

"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."

As per the settled legal position, there is also no requirement of having documents with signatures of a contemporaneous period for the purposes of comparison by an expert and the Court is however not barred from sending the disputed signatures for comparison to an expert merely because the time gap between

¹ AIR 2016 AP 118

the admitted signatures and the disputed signatures is long and the Court must nonetheless endeavour to impress upon the petitioning party that comparison of disputed signatures with admitted 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. Be that as it may. As already noted, the judicious discretion must be exercised depending upon facts and circumstances of the individual case. The trial Court having regard to the facts of the case already exercised its discretion and allowed the successive applications of the defendants. On analysis of facts of the case, this Court does not find any error in the discretion exercised by the Court below.

10. Having given thoughtful consideration, this Court finds that the trial Court is justified in allowing the subject interlocutory applications and that no grounds much less valid grounds are made out by the plaintiff calling for interference with the orders of the Court below.

11. In the result the revision petitions are dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M. SEETHARAMA MURTI, J

24th December, 2018

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