

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.4367 OF 2017

ORDER:

This revision is filed against the order dated 20.07.2017 passed in IA.No.1370 of 2016 in OS.No.339 of 2012 by the Additional Senior Civil Judge, Eluru, wherein the Court below dismissed the application filed by the petitioners/defendants under Section 45 of the Evidence Act.

Learned counsel for the petitioner/defendant submits that the suit is instituted by the respondent/plaintiff basing on a promissory note alleged to have been executed by the husband of the petitioner/defendant; that petitioner filed written statement stating that the said promissory note is a forged one and as such made present application for sending the same for expert opinion under Section 45 of the Evidence Act; and that the Court below taking an erroneous view dismissed the application. He also submits that the petitioner never admitted in the cross-examination about the execution of Ex.A1-Promissory Note by her husband, but the Court below on the wrong premise dismissed the application. He further submits that delay in filing the application is not a ground for dismissing the application filed under Section 45 of the Evidence Act and that the Court can send the document at any stage of the suit. In support of his contentions he relied on the Judgment of this Court in ***P.Venkatramana v.***

M.Venkataramana ¹ wherein it is stated that though the Court can compare the signatures and come to a conclusion, still it is better and proper for the Court to get the opinion of the expert, even in case of admitted signature is available for contemporaneous period.

On the other hand, learned counsel for the respondent/plaintiff submits that already the petitioner/defendant earlier filed IA.No.96/2016 under Section 45 of the Evidence Act and the same was dismissed on 27.04.2016 and no revision is preferred against the same; and that there are no changed circumstances to file the present application seeking same prayer. He also submits that now evidence of both sides is closed and the suit is coming for arguments and that at this belated stage the petitioner/defendant filed the petition, and as such, the Court below rightly dismissed the application. In support of his contention he relied on the Judgment in **Dhatla Lakshmipathi Raju v. P.Venkata Ramana and another** ².

In this case admittedly IA.No.96/2016 was filed by the petitioner seeking the same relief pleaded in the present IA.No.1370/2016 and the same is dismissed on 27.04.2016, against which no revision is preferred and no changed circumstances are stated for filing the present application. Though the said dismissal of earlier application is not *res judicata* but still when the order is passed on merits, there is no reason in filing the

¹ 2009 (5) ALT 113

² 2017(3) HLT 594

petition, again, for the same relief. The suit is of the year 2012 and the evidence of petitioner was admittedly closed on 23.12.2015 and the present application is filed on 13.07.2016.

This Court in ***Dhatla Lakshmipathi Raju (supra 2)*** held as follows;

“The reasoning assigned in *S.Harshavardhan Reddy* applies on all fours to the present case. Admittedly, the respondents have filed the written statement more than six years back denying execution of Ex.A1. Having kept quiet for six years and allowed the trial to be completed, the petitioner has filed the application at the stage of arguments. I am unable to agree with the submission of the learned counsel for the petitioner that cause of action for his client to file the application for sending the suit document for expert’s opinion arose only on closure of the defendants’ evidence. With the denial of execution of Ex.A1 in the written statement, cause of action had arisen for the petitioner to come out with an application for sending the suit document for expert’s opinion. I cannot refrain from observing that it is the laidback approach of the parties or their counsel in filing applications belatedly that has not only been causing prejudice to the interests of the parties, but also leading to abnormal delays in disposal of cases. Had the petitioner been diligent in filing an application immediately after filing of the written statement or at least before commencement of the trial, his interest would have been well-served. The Courts, facing severe pressure of pendency of cases for long time, cannot be expected to allow applications of this nature thwarting their efforts to dispose of cases as quickly as possible. On the one hand the litigants are critical of abnormal delays in disposal of cases and on the other hand they file applications after applications in pending suits, some of them are wholly needless, at far too belated stages stalling the suit proceedings. This attitude of the parties as

well as their counsel need to be changed and sooner it happens it is better for the litigant public.”

In view of the aforesaid facts and circumstances, the trial Court has considered the issue in proper perspective and more so, in a suit for recovery of money burden lies on the plaintiff. As such, the impugned order does not warrant interference of this Court by exercising power under Article 226 of the Constitution of India.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the CRP, shall stand closed.

25.01.2018
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A.RAJASHEKER REDDY, J