

**HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

**CRP No.6240 of 2018**

**ORDER:**

This Civil Revision Petition is filed questioning the docket order dated 26.09.2018 passed in IA No.554 of 2018 in OS No.167 of 2014 passed by the Senior Civil Judge, Nizamabad.

Notice was served on the respondent/plaintiff, but there is no appearance, despite proof of service.

This Court has heard Sri N. Srushman Reddy, learned counsel for the revision petitioner/defendant.

In the case on hand, it appears that an application was filed for appointment of an expert to examine the handwriting and to give his report. Accordingly, the documents were sent to examination by the expert. In June 2018 the handwriting expert sent his report to the Court stating that a definite finding cannot be given in the case on hand, since there are both differences and similarities between the questioned and the standard signatures. Thereafter, IA No.554 of 2018 was filed under Section 45 of Indian Evidence Act praying the Court to once again send the documents to another expert. This application was dismissed on merits. Questioning the same, the revision is filed.

The learned counsel for the revision petitioner argued that there is no prohibition in law for sending the said signatures for examination once again. It is his contention that the lower Court committed an error in rejecting his application. The learned counsel relies upon a Division Bench judgment of this Court in ***M. Ramesh Babu v. M. Sreedhar***<sup>1</sup> wherein it is held that there is no prohibition in law from seeking another opinion of the second expert. Therefore, the learned counsel argues that the lower Court committed an error in rejecting the application.

After hearing the learned counsel and after perusing the judgment, this Court notices that the Division Bench clearly considered the earlier opinion of the expert when he was examined as a witness in the open Court. The chief examination and the cross-examination of the expert were touched upon by the Division Bench in the course of its judgment. Thereafter, in para-45 of the reported judgment, the Division Bench held that further report or further enquiry is permitted by law if the Court is dissatisfied with the report or the proceedings of the Commissioner. Further in paras 46 to 51, the Division Bench held that the second Commissioner or expert

---

<sup>1</sup> 2009 (5) ALD 187 (DB)

should be appointed if the Court is satisfied that there are special circumstances and valid reasons justifying the second opinion.

Therefore, this Court is of the opinion that there is no absolute right given to a party to seek appointment of the second expert. Unless and until the report of the expert is taken on record and the Court concludes that the report that is given is incomplete, incorrect or even wrong, appointment of another expert is not possible. The satisfaction of the Court has to be recorded clearly for appointing another expert. In the case on hand, the expert has already sent a report, but he is not yet examined in the lower Court.

Therefore, this Court is of the opinion that the second application that is filed under IA No.554 of 2018 is premature. The petitioner, who is apparently dissatisfied with the report of the expert, will have to demonstrate before the lower Court that the report is not correct. Thereafter, if he files an application for appointment of second expert, the Court can proceed to enquire into the same, consider the law as laid down by the Division Bench in **M. Ramesh Babu's** case and then proceed to pass orders.

In these circumstances, the impugned docket order dated 26.09.2018 passed in IA No.554 of 2018 in OS No.167 of 2014 passed by the Senior Civil Judge, Nizamabad is set aside.

With the above observations and directions, the Civil Revision Petition is allowed. No order as to costs. Miscellaneous Petitions, if any pending in this revision shall stand closed.

Date: 28.11.2018  
Isn

**D.V.S.S. SOMAYAJULU, J**

