

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6222 OF 2017

ORDER:

This civil revision petition is filed by the petitioner under Article 227 of the Constitution of India, assailing the order dated 30.10.2017 in I.A. No.242 of 2017 in O.S.No.35 of 2016 on the file of the Court of Senior Civil Judge, Nandikotkur, Kurnool District, dismissing the petition filed under Section 45 of the Indian Evidence Act.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The respondent filed O.S.No.35 of 2016 on the file of the Court of Senior Civil Judge, Nandikotkur, against the petitioner for recovery of an amount of Rs.4,84,813/- covered under four promissory notes.

4. During the course of trial of the suit, the petitioner filed the petition under Section 45 of the Indian Evidence Act. The respondent filed counter opposing the petition. The trial Court, after hearing both sides, dismissed the petition. Hence, the present revision.

5. A perusal of the record reveals that the respondent filed the suit for recovery of the suit amount basing on Exs.A1 to A4 promissory notes said to have been executed by the petitioner in his favour. The petitioner admitted his signatures on Exs.A1 to A3 promissory notes but denied his signature on Ex.A4 promissory note. In the cross-examination, P.W.1 (respondent) categorically

admitted that there is a variation of the signature of the petitioner on Ex.A4 promissory note with that of his signatures on Exs.A1 to A3 promissory notes.

6. Whether the signature on Ex.A4 promissory note belongs to the petitioner or not would throw some light on the controversy involved in the suit. The trial Court, having made an observation that the signature on Ex.A4 is not tallying with the signatures of the petitioner on Exs.A1 to A3, ought to have sent Ex.A4 promissory note to the Handwriting Expert. The trial Court also made an observation that the petitioner is in the habit of changing his signature from time to time. It is needless to say that the Court ought not to have expressed any opinion touching the merits of the main case. In such circumstances, making of the above observations by the trial Court is not justifiable. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice.

7. Taking into consideration the facts and circumstances of the case, this Court is of considered view that it is a fit case to set aside the impugned order.

8. In the result, the civil revision petition is allowed, setting aside the order dated 30.10.2017 in I.A. No.242 of 2017. Consequently, I.A.No.242 of 2017 in O.S.No.35 of 2016 on the file of the Court of Senior Civil Judge, Nandikotkur, Kurnool District is allowed. The trial Court is hereby directed to send Ex.A4 promissory note along with the admitted signatures of the petitioners on Exs.A1 to A3 promissory notes to the Handwriting Expert, for comparison, on deposit of necessary fee by the

petitioner within the time prescribed by the trial Court. If the petitioner fails to do so, the trial Court can proceed with the suit in accordance with law. Miscellaneous petitions if any pending in this petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 03.7.2018
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