

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.5840 OF 2017

O R D E R :

This revision is filed against the order dated 13-10-2017 in I.A.No.290 of 2017 in O.S.No.202 of 2012, wherein the Court below dismissed the application filed by the petitioners/defendants under Section 45 of Evidence Act to send Ex.B.1 Will to Truth Labs, Hyderabad for comparison of admitted signatures.

Learned counsel for the petitioners submits that the Court below by taking erroneous view of law that the second application is not maintainable dismissed the application. He also submits that the Court below observed that without filing objections to the report of the expert already filed, the petitioners cannot make second application. He further submits that there is no bar in allowing the second application. In support of his contention, he relied on the judgment of this Court in **M.Ramesh Babu v. M.Sreedhar**¹.

On the otherhand, learned counsel for the respondent/plaintiff submits that the respondent already filed I.A.No.48 of 2016 to send the Will to the expert for giving his opinion and the Expert filed his report, which is marked as Ex.C.1 and the Expert was also examined as witness CW.1 on 16-03-2017. The present application is filed on 07-08-2017. He further submits that even according to the

¹ 2009(5) ALD 187 (DB)

judgment relied on by the learned counsel for the petitioner cited supra, special circumstances and valid reasons have to be recorded for allowing the second application. He further submits that in the affidavit filed in support of the petition, he does not give specific reasons as to why second application should be allowed, except saying that the 1st petitioner is not agreeable with the said report.

In this case, it is a fact that the expert report was filed in pursuance to the order passed in I.A.No.48 of 2016 and the same was marked as Ex.C.1 and expert was also cross-examined on 16-03-2017 and once again, the petitioners filed the present application on 07-08-2017 and in the affidavit filed in support of the said application except bald allegation that the 1st petitioner is not agreeable with the said expert report, no special reasons were cited for allowing the second application. There is no dispute that the second application is maintainable for sending expert opinion. But the Division Bench of this Court in the above judgment held that there is no bar to take the opinion of a second expert, but there should be special circumstances and the Court must record its reasons for sending the document to the second expert.

In view of the same, the Court below has considered the said aspects and came to conclusion that it is not proper to allow the application.

Having regard to the above, I do not see any infirmity in the order passed by the Court below warranting interference

of this Court by exercising power under Article 227 of Constitution of India and accordingly the revision is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in this revision, shall stand closed.

A.RAJASHEKER REDDY, J

07-02-2018
Nvl

