

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.6230 of 2017

ORDER:

Heard both sides and perused the grounds of revision and the impugned order of the lower Court.

Right from the notice and reply which are prior to filing of the suit, the contentions of the defendants are that the documents are forged and fabricated and to supply copy of it. It is almost with same contest opposed the suit claim and the same is defence even during trial. The revival letters Exs.A20 and 21 relied by plaintiff in support of the recovery of suit mortgage debt in contest by defendants as forged and fabricated and when sought for sending of the documents to handwriting expert for comparison under Section 45 of the Indian Evidence Act in I.A.No.1473 of 2017, it is covered by the impugned order dated 26.10.2017 the lower Court dismissed the petition with observation that these documents executed by the 1st defendant or not is to be decided by trial from the contention of the revival letters are false and forged and the suit claim is barred by limitation. But that is not the way of disposal of the application without even recording the actual lis involved in the application to grant or not the relief. In fact the relief sought for is to send those documents to handwriting expert with disputed signatures for comparison and opinion. The Court is no doubt bound to decide whether the suit claim is barred or not. Further as observed, the documents in question were forged or not is to be decided on full dressed trial in arriving a finding. Once such is the case, the expert opinion is also required as part of the evidence of its unique nature to arrive a finding for Court is not an expert. Thus, the dismissal of the application by the lower Court is unsustainable.

Even coming to the contention of the suit is of the year 2011 and the application filed is in the year 2017, nearly six years later, the Full Bench expression of this Court in **Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu (died) per L.Rs. and Others**¹ referring to **Janachaitanya Housing Limited Vs. Divya Financiers**² categorically held that there is no set period to file an application when and at what stage of proceedings, but for to decide each application on own merits.

Accordingly and in the result, the Civil Revision Petition is disposed of by setting aside the dismissal order of the lower Court and restored the application to the file of the lower Court with a direction to the lower Court to consider for sending of the disputed signatures of the document/s by ascertaining available admitted signatures and also by taking specimen signatures, if any, to the handwriting expert by fixing time which is subject to deposit of Rs.10,000/- by the petitioners/defendants to the credit of the suit to meet the expert evidence and other expenses and to refund the balance or direct to pay further required if any. The trial Court shall make every endeavour for early sending and receiving of the report and disposal of the suit therefrom stated part heard.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 05.01.2018
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¹ 2016 (2) ALT 248 (FB)

² 2008 (3) ALT 409 (DB)