

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1155 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, challenging the order, dated 16.04.2019, passed in I.A.No.236 of 2019 in O.S.No.64 of 2016, by the Principal District Judge, Karimnagar, whereby, the petition filed by the petitioner/plaintiff under Section 45 of the Evidence Act requesting to send the promissory notes under Ex.A.1 to Ex.A.4, vakalat of the respondent/defendant, written statement, served summons, notice, warrant of attachment and panchanama containing the signatures of the respondent/defendant, to the handwriting expert for comparison of the signatures of the respondent/ defendant, was dismissed.

2. Heard the learned counsel for both the sides and perused the record.

3. The learned counsel for the revision petitioner/plaintiff would contend that in the written statement, the respondent/defendant denied his signatures on Ex.A.1 to Ex.A.4 promissory notes. The subject interlocutory application was filed to send the admitted signatures of the respondent/defendant on the vakalat, written statement, served summons, notice, warrant of attachment etc., along

with the disputed signatures on Ex.A.1 to Ex.A.4 promissory notes to the handwriting expert for examination and report. The Court below erroneously held that the Court itself can compare the signatures of the respondent/defendant on the available material record under Section 73 of the Indian Evidence Act and can arrive at a right conclusion as to the genuineness of the document basing on the evidence on record. Expert opinion is very much necessary to render substantial justice to the parties to the litigation and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition as prayed for.

4. On the other hand, the learned counsel for the respondent/defendant would contend that though the respondent/defendant denied his signatures on Ex.A.1 to Ex.A.4 promissory notes in the written statement filed by him long back, the petitioner/plaintiff did not choose to file an application to send the questioned documents to the hand writing expert for examination and report, immediately after filing of the written statement. There is delay and laches on the part of the petitioner/plaintiff. As rightly held by the Court below, the Court itself can compare the admitted and disputed signatures of the respondent/defendant available on record under Section 73 of the Indian Evidence Act and can come to a just conclusion. There is nothing to interfere with the order

under challenge and ultimately prayed to dismiss the Civil Revision Petition.

5. In the given circumstances, it is relevant to state that the suit claim is based on the subject documents, i.e., Ex.A.1 to A.4 promissory notes. The truth or otherwise of the execution of the subject promissory notes under Ex.A.1 to Ex.A.4 is in question. If the opinion of the handwriting expert is sought in this case, the said course would enable the Court to come to a just conclusion. The revision petitioner/plaintiff wanted the signatures of the respondent/defendant on Ex.A.1 to Ex.A.4 promissory notes to be compared with the signatures on the written statement, served summons, notice, warrant of attachment etc. Even if such a request is considered, no prejudice would be caused to the respondent/defendant. On the other hand, it clinches the issue pending in between the parties to the litigation. In the given circumstances, the finding recorded by the Court below that the comparison of the admitted and disputed signatures of the respondent/defendant with the material record by the Court itself under Section 73 of the Indian Evidence Act is not proper. The Court below ought to have considered the request of the revision petitioner/plaintiff in the subject interlocutory application. Under these circumstances, the impugned order is liable to be set aside.

6. Accordingly, the impugned order, dated 16.04.2019, passed in I.A.No.236 of 2019 in O.S.No.64 of 2016, by the Principal District Judge, Karimnagar, is set aside. The Court below is directed to send the disputed signatures of the respondent/defendant on Ex.A.1 to Ex.A.4 promissory notes and his admitted signatures on the written statement, vakalat, served summons, notice warrant of attachment etc., to the handwriting expert for examination and report, at the cost of the revision petitioner/plaintiff.

7. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

26th November, 2019
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