

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1167 of 2019

ORDER :

This Revision is filed challenging the order dt.18-02-2019 in I.A.No.878 of 2018 in O.S.No.396 of 2007 of the V Senior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein is 1st defendant in the suit.
3. The respondent Nos.1 and 2 filed the said suit against petitioner to declare that petitioner ceased to be a partner of G.Rajender Reddy and Co. w.e.f. 03-09-2005, and for a perpetual injunction restraining him from interfering with the business affairs of the said firm and for other reliefs. They rely upon a letter of resignation dt.03-09-2005 and another authorization letter dt.05-09-2005 in the suit which are Exs.A-16 and A-17.
4. Written statement was filed by petitioner contending that blank letter heads of the firm/papers/stamp papers were obtained by the 1st respondent from the petitioner from 1994 to 1997 at the time when the petitioner was visiting and staying at a site in Gujarat and some of them were misused to get the letters Ex.A-16/dt.03-09-2005 and Ex.A-17/dt.05-09-2005.
5. Thus the signatures on both the documents are admitted in the written statement by the petitioner/1st defendant.

6. However, the 1st respondent filed I.A.No.878 of 2018 under Section 45 of the Evidence Act to send these documents to handwriting Expert to be marked with the admitted signatures of D.W.1 like Ex.B-10, Ex.B-12-B, Ex.B-17, counter-affidavit in I.A.No.1055 of 2017 in O.S.No.396 of 2007 dt.03-09-2017 and vakalat.

7. In the affidavit filed in support of I.A.No.878 of 2018, it is the contention of 1st respondent that when Exs.A-16 and A-17 were confronted to D.W.1, he deliberately did not accept his signatures on it and stated that it resembles his signature but are not signed by him, and since he did not admit his signature, the Expert opinion is required.

8. Counter-affidavit was filed by petitioner stating that Exs.A-16 and A-17 letters were created by 1st respondent.

9. By order dt.18-02-2019, the Court below allowed the said application.

10. Assailing the same, this Revision is filed.

11. Though learned counsel for petitioner sought to contend that at the stage when the matter is posted for arguments, this exercise ought not to have been done by the Court below, having regard to the admission in the written statement by petitioner that the signature on those two documents are his signatures, merely because during course of evidence he did not admit his signatures, the Court below could not

have referred the two documents to an Expert. Having taken a plea in the written statement that he had given signed blank stamp papers and letter heads to the 1st respondent on which Exs.A-16 and A-17 probably fabricated, it was not open to the 1st defendant/petitioner to speak to the contra in his evidence because such evidence would be contrary to his pleadings, and cannot be taken into account.

12. Therefore, the Court below could not have exercised its power to refer the documents under Section 45 of the Evidence Act, 1872 and it was wholly unnecessary for it to do so having regard to the admission of the signatures of petitioner on Exs.A-16 and A-17 in the written statement of the petitioner.

13. The Civil Revision Petition is accordingly allowed and the impugned order is set aside. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-04-2019

Vsv