

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.6442 of 2018

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.10-10-2017 in I.A.No.328 of 2017 in O.S.No.130 of 2014 of the IV Senior Civil Judge, City Civil Court, Hyderabad.

2. Petitioners are defendants in the suit.
3. The said suit was filed by respondent-Bank against petitioners for recovery of money from the petitioners.
4. It is the contention of the respondent/plaintiff that petitioners requested on 19-07-2004 the respondent to provide a loan of Rs.4.00 lakhs to the 1st petitioner for meeting his educational expenses in pursuing M.B.B.S. course from Deccan College of Medical Sciences at Kanchanbagh, Hyderabad; that 2nd petitioner agreed to stand as guarantor and educational loan of Rs.4.00 lakhs was sanctioned to the 1st petitioner on 05-07-2005 and the 2nd petitioner executed guarantee deed for the said loan. It was alleged that the 1st petitioner did not pay loan installments as per the agreement in spite of repeated requests and demands by the respondent-Bank and though the 1st petitioner completed the M.B.B.S. course in March/April, 2008, he did not repay the loan. It was also contended that 1st petitioner executed

acknowledgment of liability on 05-06-2008 and 01-02-2011 with the respondent-Bank and it is binding on 2nd petitioner also. It was also contended that an amount of Rs.2,457/- was paid by 1st petitioner on 22-03-2011 and is a valid acknowledgment of debt.

5. Written statement was filed by petitioners opposing the suit claim. It was denied that 1st petitioner executed acknowledgment of liability on 05-06-2008 and 01-02-2011 with respondent-Bank and the signatures of the 1st respondent on the said acknowledgment of debts were forgeries. A plea was also raised that the demand promissory note dt.05-07-2005 filed by respondent was insufficiently stamped. It was also denied that there was any part payment made to the loan account by petitioners. It was contended that as per the guidelines issued by the Reserve Bank of India, the respondent was not supposed to take guarantee in respect of educational loan for Rs.4.00 lakhs and below.

6. During the course of trial, the petitioners filed I.A.No.328 of 2017 invoking Order VIII Rule 1-A (3) C.P.C. for receipt of certain documents.

7. The petitioners stated therein that they had obtained an authenticated certificate of original signature of 1st petitioner from the State Bank of Hyderabad, Dabeerpura branch where the 1st petitioner had a Savings Bank Account since 2011; and in the said certificate, the said Branch Manager of the said Bank, on comparing with the

disputed signature in Ex.A-8 (acknowledgment of liability dt.01-02-2011), had concluded that the alleged signature in Ex.A-8 is not that of the 1st petitioner.

8. It was further stated that the 1st petitioner had obtained the original Forensic Examination Report with file No.TLH/QD/183/2017 dt.27-06-2017 from the Truth Labs, Hyderabad wherein the Document Examiner concluded that the signature of the 1st petitioner on Ex.A-8 is forged.

9. He further contended that the original pass book of Savings Bank account of the 1st petitioner in Vijaya Bank, Basheerbagh Branch, Hyderabad were traced out, which shows an unauthorized transaction on 22-03-2011 of Rs.2,457-34 ps and it was a crucial document to prove the case of the petitioners. It was prayed that the said documents be received in evidence and.

10. Counter was filed by respondent to the said application pointing out that 2nd petitioner had earlier filed an application to send the signature of 1st petitioner on Exs.A-7 and A-8 to the Handwriting Expert in Government Forensic Laboratory, Hyderabad for the purpose of comparing the signatures thereon with the admitted signatures; the said application was allowed by the Court and Expert report was also received by the Court, which stated that the signatures found on Exs.A-7 and A-8 were those of the 1st petitioner. It is

contended that filing of this application is only to delay the disposal of the suit and that there are no merits in the application.

11. By order dt.10-10-2017, the Court below partly allowed I.A.No.328 of 2017 and permitted the petitioners to file the original pass book but did not permit to file the Expert opinion from the Truth Labs obtained by them subsequently. It observed that it had earlier allowed the application to send Exs.A-7 and A-8 to the Handwriting Expert in Government Forensic Laboratory, that it was allowed and report was also received and it is on the file; that the Expert opinion now sought to be placed before the Court by petitioners was not obtained by sending documents from the said Court by seeking permission for comparison; and such new opinion was obtained by comparison with the certified copy of the alleged disputed document from the same Expert lab. It observed that it is not from the Court but in person and without permission from the Court and since already a report was received from the same Expert laboratory no permission can be given to file the subsequent Expert opinion.

12. Assailing the same, this Revision is filed.

13. Learned counsel for petitioners contended that the Court below erred in not receiving the said document i.e. Expert opinion given by M/s.Truth Labs, Hyderabad and it could not have expressed any opinion on the merits of the said document. He further contended that as per the decision of this Court in **Kati Maheswara Rao Vs. Uppati**

Lalitha and others¹, not only the original document can be sent for Expert opinion, but also photocopy, and the Court below could not have taken any objection to receive the second Expert opinion obtained from the Truth Labs.

14. Learned counsel for respondent supported the order passed by the Court below and pointed out that already in I.A.No.487 of 2016 decided on 08-12-2016 by the Court below, an Expert opinion was obtained from the same lab at the instance of the petitioners and merely because it is unfavourable to the petitioners, petitioners cannot secure another report and seek to mark the same particularly when the latter report was obtained without taking Court's permission. He also pointed out that in I.A.No.487 of 2016 in fact Exs.A-8 and A-7 were sent to the Truth Labs from which the subsequent report was also obtained.

15. I have noted the contentions of both sides.

16. Admittedly in I.A.No.487 of 2016 Exs.A-8 and A-7 were sent to the Truth Labs, Hyderabad at the instance of the petitioners and the said lab had sent a report unfavorable to the petitioners and had been placed on record.

17. Had the petitioners obtained a report from a different scientific laboratory and sought to mark it, to contradict the earlier one, one can probably consider such request. But such is not the case.

¹ 2018(3) ALD 375

18. I therefore do not find any error of jurisdiction in the order passed by the Court below refusing to permit the petitioner to file another Expert opinion from the same Laboratory, which had given an earlier report adverse to them.

19. The Civil Revision Petition fails and it is accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-04-2019

Vsv

