

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CIVIL REVISION PETITION NO: 3381 OF 2023

Between:

1. Yashwanth Rathode, , S/o.Bheem Singh Rathode Aged 60 years, Occ: Retd. SCCL Employee Manuguru, R/o.T.26, Bombay Colony of Manuglifu N/o.Flat No.108, Ward No.29, Veerabhadraeswar Colony Ramnagar, Vijayapur-Jalnagar, Karnataka State.

...Petitioner/Petitioner/Defendant

AND

1. Inagala Venkateshwarlu, S/o.Pullaiah Aged 60 years, Occ . Mechanic R/o.6-10-63, Ganesh Basthi, Kothagudem Town Bhadradi Kothagudem District.

...Respondent/ Respondent/Plaintiff

Petition filed under Article 227 of the Constitution of India, against/aggrieved by the Order dt.12.09.2023 passed in I.A.No.05 of 2023 in O.S.No.126 of 2020 on the file of the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class at Kothagudem.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings including trial in O.S.No.126 of 2020 on the file of the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class at Kothagudem, pending disposal of the above C.R.P.

Counsel for the Petitioner(s): SRI. P SHRAVAN KUMAR GOUD

Counsel for the Respondents: ERIGI GANESH

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL
CIVIL REVISION PETITION No.3381 OF 2023

ORDER:

- 1 This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the order dated 12.09.2023 passed in I.A.No.05 of 2023 in O.S.No.126 of 2020 on the file of the Court of the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Kothagudem, wherein and whereby the petition filed by the petitioner under Section 45 of the Evidence Act to send the Ex.A.1 promissory note along with his admitted signatures available in vakalatnama and written statement to the handwriting expert for exemption and opinion was dismissed.
- 2 Heard Sri P.Shraavan Kumar Goud, learned counsel for the petitioner and Sri Erigi Ganesh, learned counsel for the respondent.
- 3 The respondent herein being plaintiff instituted the suit O.S.No.126 of 2020 against the petitioner herein for recovery of money basing on the suit promissory note. The petitioner herein filed his written statement in the said suit. Now, after lapse of four years the petitioner came up with I.A.No.05 of 2023 with the prayer stated supra. The learned trial Court dismissed the said petition with an observation that the petitioner has not filed any contemporary documents containing his admitted signatures to

send the same to the expert for comparison, by relying upon the decision of the High Court of Andhra Pradesh in **Tadi Suryanarayana v. Mylavarapu Rama Venkata Krishna Narsimha Rao**¹. The trial Court further observed that the petitioner filed the petition at the fag-end of the suit i.e. when the suit is coming for arguments.

4 The contention of the learned counsel for the petitioner is that the trial Court ought to have seen the reason for not filing the application much earlier because the petitioner has taken a plea in his written statement that the suit promissory note is a concocted document and hence there is no possibility of changes in the signatures within three years. It is his further contention that since the very suit itself is based on the Ex.A.1 suit promissory note, and when the petitioner's signatures are available on vakalat and written statement which were filed in the year 2020 itself, the reasoning of the court below that the changes in the signatures may be varied and therefore they cannot be sent for opinion is absolutely based on assumptions and presumptions. The learned counsel for the petitioner further contended that in view of the specific objection raised by the defendant as to the genuineness of the suit promissory note, the Court below ought to have sent the document for expert opinion for

¹ 2020 (1) ALT 431

comparison of the disputed signatures to meet the ends of the justice. He further contended that if such method is followed no prejudice would be caused to either side and on the other hand it would enable the Court to arrive at a right and definite conclusion.

5 On the other hand, the learned counsel for the respondent while opposing the present petition submitted that the trial Court has rightly dismissed the petition filed by the petitioner and that the petitioner has filed the I.A. before the trial Court only to protract the litigation.

6 No doubt, there is no time limit fixed under Section 45 of the Evidence Act to send the document to an expert for comparison, but the petitioner should offer a plausible reason in order to establish his stand. In the instant case, the petitioner has not filed any contemporary documents containing his admitted signatures to send the document for comparison. So the principle laid down in Tadi Suryanarayana case (1 supra) relied upon by the learned trial Court would amply fortify the conclusion arrived at by the learned trial Court.

7 Moreover, it is not for the defendant to take out an application under Sec.45 of the Indian Evidence Act as the onus is only on the plaintiff to prove that the signature found in the suit promissory note is the signature of the defendant since the defendant has /

his written statement. However, Section 73 of the Indian Evidence Act also empowers the Court to compare such handwriting in order to come to its own conclusion. Further the opinion of the handwriting expert alone is not the deciding factor in finding out the genuineness of the promissory note and the same could be tested by examining the attesting witnesses and also in some other modes and it is the duty of the plaintiff to establish his case by letting in sufficient oral and documentary evidence. It is only when the Court forms an opinion that the assistance of an expert is essential to enable it to arrive at a just determination of the issue of the identity of the disputed writing, then the court may take the assistance of the expert, that too after the remedy available under Section 73 of the Evidence Act being exhausted.

8 In catena of decisions this Court has deprecated the practice of filing applications for examination of documents by handwriting experts at a late stage and thereby protracting and holding up the proceedings. Having regard to the facts and circumstances and particularly keeping in view that the necessary evidence was already adduced by both the parties in support of their claims, the Court below in exercise of its discretion concluded that it is not necessary to send Ex.A1 promissory note for expert's opinion. Such discretion exercised by the Court below on

appreciation of the evidence already adduced cannot be held to be perverse or vitiated on account of any extraneous considerations.

9 As noted above, the application for sending the disputed signatures to an expert for comparison with the admitted signatures cannot be ordered as a matter of course, but it has to be considered keeping in view the facts and circumstances of a particular case. Since such discretion was exercised by the Court below in a judicious manner, the impugned order in declining to send Ex.A1 promissory note for opinion of handwriting expert cannot be said to be vitiated by any patent error of fact or law.

10 The order of the lower court in the circumstances is quite valid and does not call for interference from this court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

11 Accordingly, the civil revision petition is dismissed. No costs. Miscellaneous petitions if any pending in this civil revision petition shall also stand dismissed.

Sd/- Mohd Sanaullah Ansari
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Junior Civil Judge-cum-Judicial Magistrate of First Class at Kothagudem
2. One CC to SRI P SHRAVAN KUMAR GOUD Advocate [OPUC]
3. One CC to SRI ERIGI GANESH Advocate [OPUC]
4. Two CD Copies
AA/BP

CWR

HIGH COURT

DATED: 29/12/2023



ORDER

CRP.No.3381 of 2023

**THE CIVIL REVISION PETITION
IS DISMISSED – WITHOUT COSTS**

⑥ CHR
5/3/24