

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

CIVIL REVISION PETITION No.67 of 2022

ORDER:

The instant Civil Revision Petition has been preferred against the order dated 15.11.2021 passed in I.A.No.234 of 2020 in O.S.No.39 of 2019 on the file of the Principal Junior Civil Judge, Giddalur, Prakasam District.

2. Heard Mr.Nagaraju Naguru, learned counsel for the petitioner and Mr.Turaga Sai Surya, learned counsel appearing for the respondent.

3. The petitioner herein is defendant in the above referred suit. The respondent/plaintiff filed the said suit for recovery of a sum of Rs.1,71,600/- with future interest and costs. The petitioner/defendant filed written statement, *inter alia*, contending that the suit promissory note is forged document and his signatures were forged. After examination of P.Ws 1 and 2 on behalf of the respondent/plaintiff, the matter was posted for defendant's evidence on 25.07.2019. At that stage, the petitioner filed I.A.No.234 of 2020 under Section 45 of the Indian Evidence Act, 1872 to send Ex.A.1 promissory note to the handwriting expert by receiving specimen writings in the four promissory notes which are annexed to the said application and to receive his specimen signatures in the open Court along with the vakalatnama and written statement for comparison. The respondent/plaintiff filed counter and opposed the said application. After considering the matter, the learned Trial Court dismissed the said application. Hence, the present Civil Revision Petition.

4. The learned counsel for the petitioner assailed the order under revision contending, *inter alia*, that the view taken by the learned Trial Court that the application is filed only to drag on the proceedings is

un-sustainable. He submits that the matter was posted for defendant's evidence on 25.07.2019 and the application under Section 45 of the Indian Evidence Act was filed on 06.01.2020 and therefore the Trial Court is not correct in coming to a conclusion that the I.A is filed only to drag on the proceedings. He also submits that the view of the learned Trial Court that the petitioner/defendant ought to have taken steps before commencement of Trial or prior thereto is untenable and contrary to the well settled principles of Law. While submitting that the petitioner/defendant has taken a specific stand in the written statement that the suit promissory note is forged, the learned counsel further contends that the application under Section 45 of the Indian Evidence Act can be made at any stage. The learned counsel placing reliance on the judgment of a learned Judge in **Gulam Ghouse and Ors., v. Madarse Jeelania Shama-Ul-Uloom**¹ submits that in view of the plea taken in the written statement, the learned Trial Court ought to have sent the suit promissory note for the opinion of expert as it would assist the Court in effective adjudication of the '*lis*'. Contending so, the learned counsel seeks to set aside the order passed by the learned Trial Court.

5. Per contra, the learned counsel for the respondent supported the order under revision *inter alia* stating that the conduct of the petitioner/defendant disentitles him for securing the relief sought for. He contends that though the petitioner/defendant has taken a plea of forgery, he has not chosen to file any application seeking opinion of the expert with reference to suit promissory note at the earliest point of time. He submits that after closure of the evidence of P.W.2-the attestor of suit promissory note, who deposed that the petitioner/defendant himself

¹ 2007 (4) ALT 432

scribed the suit promissory note, the I.A in question was filed at a belated stage to get over the same. While submitting that there are no bonafides in the application made by the petitioner/defendant, the learned counsel submits that the order under revision is well considered and warrants no interference by this Court. The counsel also places reliance on the orders passed by a learned Judge in **Dara Srinivasa Rao v. Nallamilli Venkata Reddy**² and submits that the revision petition is liable to be dismissed.

6. On consideration of the rival submissions and perusal of the record, the point that falls for adjudication by this Court is as to whether the order of the Trial Court warrants interference and the application for referring the documents for expert opinion as sought for deserves to be allowed, in the facts and circumstances of the case?

7. A perusal of the order under revision would disclose that the application filed by the petitioner/defendant was negated primarily on the ground that he has not taken steps seeking to refer the suit promissory note (Ex.A.1) for expert opinion before commencement of Trial or prior thereto, but, after closure of the evidence on the plaintiff's side and as such the application is liable to be dismissed. The said view of the learned Trial Court is not tenable in the light of the judgment of the Hon'ble Full Bench **Bande Siva Shankara Srinivasa Prasad @ Ravi Surya Prakash Babu**³. The Hon'ble Full Bench in the said judgment, while answering the reference, *inter alia*, held as follows:-

"No time limit could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of each case".

² 2017 (1) ALT 710

³ 2016 (2) ALT 248

8. In **Gulam Ghouse's** case (referred (1) supra), which relates to suit for recovery of amount on the foot of a pronote, defence was taken that it is forged. While interfering with the order rejecting the application to send the documents to the expert for opinion, the learned Judge opined that where a crucial issue regarding the maintainability of suit is involved on the basis of documents allegedly forged and fabricated, the Lower Court ought to have exercised its discretion judiciously and come to a conclusion that the opinion of expert would help the Court to give a quietus to the plea taken by the defendants. In the said case, the defendants therein filed an application to send the documents covered by Exs.A.6, A.8 and A.9 to the handwriting expert for comparison with the admitted signatures of the 1st defendant on Exs.A.1 to A.5 and other documents to give an opinion. Though it is also a case where stand is taken that the suit promissory note is forged, the said judgment is not applicable to the facts of the present case, wherein the documents sought to be sent for expert's opinion are signatures on the vakalat and written statement for comparison with Ex.A.1 promissory note.

9. At this juncture, it is appropriate to refer to the orders passed by a learned Judge in **P.Padmanabhaiah v. G.Srinivasa Rao**⁴ the case of **Dara Srinivasa Rao's** case (referred (2) supra). In **P.Padmanabhaiah's** case (referred (4) supra), the defendant in O.S.No.324 of 2010 on the file of Court of the Additional Senior Civil Judge, Kurnool filed an application under Section 45 of the Indian Evidence Act to send the vakalat and written statement containing his signatures along with the promissory note (Ex.A.1) for handwriting expert for comparison of his signatures on the vakalat and written statement with the signatures said to be of him on

⁴ AIR 2016 AP 118 (FB)

Ex.A.1 and furnish a report with opinion as to the genuineness or otherwise of the disputed signatures on the said exhibits. The said application was allowed. The learned Judge of this Court while interfering with the orders of the Trial Court had extensively dealt with the matters with reference to comparison of signatures on vakalat and written statement with the disputed documents, *inter alia*, held as follows:-

“In the well considered view of this Court, the defendants signatures on the Vakalat and the Written Statement cannot be considered as signatures of comparable and assured standard as according to the plaintiff even by the date of the filing of the vakalat the defendant is clear in his mind about his stand in regard to the denial of his signatures on the suit promissory note and the endorsement thereon and as the contention of the plaintiff that the defendant might have designedly disguised his signatures on the Vakalat and the Written Statement cannot be ruled out prima facie. The view point being projected by the plaintiff that if the defendant is called upon to furnish his signatures in open Court, he might designedly disguise his signatures while making his signatures on papers in open court is also having considerable force and merit. Unless the defendant makes available to the Court below any documents, with his signatures, of authentic and reliable nature more or less of a contemporaneous period, and unless such documents are in turn made available to the expert along with the suit promissory note, the expert will not be in a position to furnish an assured opinion, in the well considered view of this Court.There is no point in sending to an expert the documents of doubtful nature and character and add one more piece of unreliable evidence and burden the record by wasting the time and money of the parties. When there are no signatures of comparable and assured standard on the material record before the trial Court, it is unsafe to obtain the signatures of the defendant in open Court and send the said signatures and also his vakalat and written statement to an expert for obtaining his opinion after comparison of the signatures thereon with the disputed signatures on the suit promissory note, as any such opinion obtained from a handwriting expert on such material is not going to be of any help to the trial Court in effectively adjudicating the lis more particularly in the light of the admitted legal position that expert's opinion evidence as to handwriting or signatures can rarely, if ever, take the place of substantive evidence.”

10. In the light of the above well considered view of the learned Judge, this Court is not inclined to interfere with the order passed by the learned Trial Judge, though the reason assigned by it for dismissing the I.A in question to the effect that no steps were taken before commencement of Trial is not sustainable. In the light of the above conclusions, Civil Revision Petition fails and the same is liable to be dismissed.

11. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand disposed of.

Date: .03.2022

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NINALA JAYASURYA, J

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