

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.1660 of 2023

Between:

B.Prabhakar @ B.Prabhakar Naidu

... Petitioner/Defendant

Versus

Hari Prasad

... Respondent/Plaintiff

* * * * *

DATE OF ORDER PRONOUNCED : 21.08.2023

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Order? Yes/No

JUSTICE RAVI NATH TILHARI

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

+ CIVIL REVISION PETITION NO.1660 OF 2023

% 21.08.2023

#Between:

B.Prabhakar @ B.Prabhakar Naidu

... Petitioner/Defendant

Versus

Hari Prasad

... Respondent/Plaintiff

! Counsel for the Revision- :: Sri T.Janardhan Rao
petitioner/Defendant

^ Counsel for the Respondent/ :: Sri V.Nitesh
Plaintiff

< Gist:

> Head Note:

? Cases referred:

1. **Janachaitanya Housing Ltd. v. Divya Financiers**
reported in **2008 (4) ALD 339 (DB).**
2. **Mudi Reddy Tirupathi Reddy v. T.Linga Reddy**
and others reported in **2015 (6) ALT 512.**
3. **Dara Srinivasa Rao v. Nallamilli Venkara Reddy**
reported in **2021 (3) ALD 203.**
4. **Byalla Devadas v. Sivapuram Rama Yogeswara**
Rao reported in **2022 (5) ALT 614.**

This Court made the following:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO.1660 OF 2023

ORDER:

Heard Sri T.Janardhan Rao, learned counsel for the revision-petitioner/defendant and Sri Chilukuri Karthik, learned counsel representing on behalf of Sri V.Nitesh, learned counsel for the respondent/plaintiff.

2. This civil revision petition has been filed by the revision-petitioner/defendant under Article 227 of the Constitution of India, challenging the Order, dated 03.04.2023, 'Rejecting' the I.A.No.367 of 2022 filed by the revision-petitioner/defendant under Section 45 of the Indian Evidence Act, 1872 in O.S.No.260 of 2017 on the file of Additional Senior Civil Judge's Court, Chittoor.

3. The respondent/plaintiff filed O.S.No.260 of 2017 for decree, directing the revision-petitioner/defendant to pay the suit claim under promissory note together with future interest at the rate of 24% per annum and consequential reliefs.

4. The revision-petitioner/defendant in the written statement denied borrowing any amount from plaintiff. He also denied execution of any promissory note. He also pleaded that his signatures on the promissory note were forged and fabricated.

5. Both the parties lead evidence. After closure of the evidence, the revision-petitioner filed I.A.No.367 of 2022 under Section 45 of the Indian Evidence Act, 1872, to send the promissory note, dated 09.07.2016 (Exhibit A.1) along with his admitted signatures for comparison and opinion of handwriting expert, to the Director, Forensic Science Laboratory, Mangalagiri of Guntur District.

6. Along with I.A.No.367 of 2022, the revision-petitioner did not file any document which might have contained his admitted signatures.

7. The respondent/plaintiff filed counter to I.A.No.367 of 2022. He *inter alia* denied the contents of the interlocutory application and the affidavit in support thereof. He further submitted that the Court had the power to compare the

signature of the defendant with the admitted signature. It was further submitted that the defendant was in the habit of changing language and type of his signature. He requested to reject the application I.A.No.367 of 2022.

8. The learned Trial Court framed the following point for determination: -

“Whether the petitioner/plaintiff is entitled to send the suit promissory note to the Handwriting Expert, APFSL, Mangalagiri to compare the signatures on Ex.A.1 promissory note dt.09.07.2016 as prayed for?”

9. The learned Trial Court *vide* Order, dated 03.04.2023 ‘Rejected’ the petitioner’s I.A.No.367 of 2022 application.

10. Challenging the Order, dated 03.04.2023 the present civil revision-petition has been filed.

11. The learned Trial Court ‘Rejected’ the application, on the grounds, that the application was filed after closure of the evidence of both the parties; and that the revision-petitioner did not file his admitted contemporary signatures

to compare the same with the signatures on the suit promissory note.

12. Sri T.Janardhan Rao, learned counsel for the revision-petitioner/defendant submits that the grounds of rejection are unsustainable. The application could not be rejected on the ground that it was filed after closure of evidence.

13. He further submits that it could be filed at such a stage, as well. He further submits that the signatures of the revision-petitioner were available in his written statement and the vakalat. So, the Trial Court erred in observing that the admitted contemporary signatures of the petitioner/defendant, to compare with the disputed signature on the promissory note, was not filed.

14. Learned counsel for the petitioner relied in the cases of ***Janachaitanya Housing Ltd. v. Divya Financiers***¹ and

¹ 2008 (4) ALD 339 (DB).

Mudi Reddy Tirupathi Reddy v. T.Linga Reddy and Others².

15. Sri Chilukuri Karthik, learned counsel representing Sri V. Nitesh, learned counsel for the respondent/plaintiff, submits that the application was filed belatedly after closure of the evidence of both the parties. So, the Trial Court did not err in rejecting the same.

16. He further submits that the revision-petitioner/defendant did not file any contemporary document containing the admitted signatures for comparison with the disputed signatures. So, the Trial Court correctly observed in that regard. So far as the defendant/petitioner's signatures on his written statement and vakalat are concerned, he submits that the comparison of the disputed signatures cannot be made with the signatures on the written statement and the vakalat.

17. Learned counsel for the respondent placed reliance in the cases of ***Dara Srinivasa Rao v. Nallamilli Venkara***

² 2015 (6) ALT 512.

Reddy³ and Byalla Devadas v. Sivapuram Rama Yogeswara Rao⁴.

18. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

19. In view of the submissions advanced, the point for consideration is:

“Whether the Rejection of the petitioner’s application in I.A.No.367 of 2022 in O.S.No.260 of 2017 is justified or it calls for interference?”

20. The first ground of Rejection is that the application was filed belatedly after closure of the evidence of both the parties.

21. On this aspect, in **Janachaitanya Housing Ltd** (supra) on a reference made to the larger Bench, noticing two inconsistent views taken by the learned Single Judge in different cases, the Division Bench of this Court held that no

³ 2021 (3) ALD 203.

⁴ 2022 (5) ALT 614.

time could be fixed for filing application under Section 45 of the Indian Evidence Act, for sending the disputed signatures or writings to the handwriting expert for comparison and opinion. The 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 the each case.

22. The relevant part of Para Nos.8 and 9 of ***Janachaitanya Housing Ltd*** (supra) is reproduced as under:

“8. “...In view of the same, we are of the opinion that the Court cannot lay down any hard-and-fast rules controlling the discretion of the Court to send the disputed documents/writings for the opinion of the expert or to examine him in support of such opinion. On sending the document to handwriting expert and on receiving report, parties, on showing sufficient cause, may call upon the Court to permit them to examine hand-writing expert or any witness in support or rebut the same opinion...”

“9. For the reasons aforementioned, we answer the reference thus: “No time 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 the each case.”

23. So, in view of the Division Bench Judgment, no hard and fast rule can be applied. No time limit can be fixed for filing applications under Section 45 of the Indian Evidence Act, 1872; It is within the discretion of the Court to consider, if, the application so filed, belatedly, is to be allowed or rejected, depending upon the facts and circumstances of each case.

24. In the present case, the Trial Court in the exercise of its discretion, under the facts and circumstances of the case, considered not to allow the belated application filed after closing the evidence of both the parties. Learned counsel for the petitioner tried to submit that as no time

limit has been fixed, it can be filed at any stage. The submission deserves rejection. 'No time limit' does not mean at any time. The stage, at which the application is filed, is left to the discretion of the Trial Court considering the facts and circumstances of each case to take decision. The suit was filed in the year 2017 for recovery of money based on promissory note. The application was filed in the year 2022 after about five (05) years, after closure of evidence. Under such circumstances, the Trial Court having exercised the discretion one way in rejecting the application, on the ground of belated application, this Court, in the exercise of jurisdiction under Article 227 of Constitution of India does not find any reason to interfere with such exercise of discretion.

25. The second ground of rejection is that the revision-petitioner/defendant did not file any contemporary document containing his admitted signatures, for comparison with the disputed signature.

26. Learned counsel for the petitioner submits that such comparison could be made from the admitted signatures of the petitioner on his written statement and the Vakalat. He contends that in the case of **Mudi Reddy Tirupathi Reddy** (supra), the application for verification of the disputed signatures was permitted for comparison of the signatures in the plaint and vakalat. So, on the analogy, the disputed signatures on the written statement and vakalat could also be sent for comparison with the disputed signature on pronote.

27. The said submission deserves rejection. The Judgment in **Mudi Reddy Tirupathi Reddy** (supra), does not support the submission of the learned counsel for the petitioner. His submission proceeds on wrong assumption of fact and law. In **Mudi Reddy Tirupathi Reddy** (supra) the plaintiff therein filed the suit for Specific Performance of an Agreement of Sale Receipt, dated 04.04.2004. The defendant therein denied his signatures on the said document. When the case was at the stage of examination of D.W.1, the plaintiff filed

application under Section 45 of the Indian Evidence Act, 1872, to send the said document to an expert in handwriting to compare the signatures thereon, with the admitted signatures of defendants on Ex.B.1 to Ex.B.4. From the facts of the judgment, it is evident that the disputed signatures of the defendants on the Agreement of Sale Receipt were sought to be compared with their admitted signatures on the documents Ex.B.1 to Ex.B.4.

28. The ***Mudi Reddy Tirupathi Reddy*** (supra) is not a case of comparing the disputed signatures of the defendant; from the signatures on the written statement or vakalat. It is also not a case where the signatures of the plaintiff were to be compared from the plaintiff's signatures on the plaint and vakalat. It was a case of comparing the signature of the defendants, but it could not be from the plaint as the defendants would have no signatures on the plaint or the vakalat of plaintiff. The 'plaint' and 'vakalat' as mentioned in para No.2 of the judgment in ***Mudi Reddy Tirupathi Reddy*** (supra) (in last sentence), it appears to be an error. However,

there is clarity that the comparison was to be made from the admitted signatures of the defendants on Exs.B.1 to Ex.B.4 in **Mudi Reddy Tirupathi Reddy** (supra). The said case is therefore of no help to the petitioner.

29. In **Dara Srinivasa Rao** (supra), it has been clearly laid down that the defendant's signatures on his vakalat and written statement, cannot be considered as signatures of assured standard for comparison with his disputed signatures.

30. It is apt to reproduce para Nos.9 to 11 of **Dara Srinivasa Rao** (supra) as under:

“9. On perusal of the impugned order under this revision and also the material available on record, it appears that the disputed signature in Ex.A1/suit promissory note is dated 15.01.2012 and the suit was filed in the year 2015. The present revision petition is filed in the year 2019 to send the suit promissory note for comparison of signature with admitted signatures of the petitioner over Vakalat and Written Statement. Admittedly, there is a gap of three years between both of them. As such, the proposition of law laid down by this Court in **Bande Siva Shankara Srinivasa**

Prasad v. Ravi Surya Prakash Babu⁵, relied by the learned counsel for the petitioner is no useful to support his contention basing on the facts and circumstances of the present case.

10. In the judgment relied by the learned counsel for the respondent in **Chennadi Jalapathi Reddy v. Baddam Pratapa Reddy (dead) through Legal Representatives and another**⁶, the Hon'ble Apex Court at Para No.24, it was held as under:

“There is another reason why we are not inclined to place reliance on the opinion of the expert DW2. From a perusal of his report Ext. B2, it is evident that barring the signature on a written statement in a prior suit, all other admitted signatures of the first defendant are of a period subsequent to the filing of the plaint (i.e., on the vakalatnama and the written statement filed in this suit itself). These admitted signatures taken subsequent to the filing of the suit could not have been used as a valid basis of comparison, and their use for this purpose casts serious doubt on the reliability of the entire report Ext. B2. Thus, the report was liable to be discarded on this ground alone,

⁵ AIR 2016 (Hyd.) 118.

⁶ (2019) 14 SCC 220.

and was wrongly relied upon by the High Court.”

11. This Court has an occasion to consider the similar issue in ***P.Padmanabhaiah v. G.Srinivasa Rao***⁷ and held as under:

“In the well considered view of this Court, the defendant’s 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

⁷ AIR 2016 AP 118 (FB).

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.”

31. In ***Byalla Devadas*** (supra), also, the same proposition of law has been laid down. It has been held that the signatures on the vakalat and the written statement of the defendant cannot be send for comparison to the disputed signatures. There would be no point in sending to an expert the documents of doubtful nature and character and add one more piece of unreliable evidence. 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 opinion after comparison. It was further observed and held that the defendant’s signature on the vakalat and the written statement cannot be considered as signatures of comparable and assured standard, as by

that time i.e., filing of the vakalat and written statement, the defendant is clear in his mind about his stand in regard to the denial of his signatures on the suit promissory note. The endorsement thereon cannot be ruled out as the defendant might have designedly, disguised his signatures on the vakalat and written statement.

32. Para Nos.9 and 10 in **Byalla Devadas** (supra), are reproduced as under:

“9. At this juncture, it is appropriate to refer to the orders passed by a learned Judge in **P.Padmanabhaiah** and the case of **Dara Srinivasa Rao**. In **P.Padmanabhaiah** case referred 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.A1) for handwriting expert for comparison of his signatures on the vakalat and written statement with the signatures said to be of him on 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.”

33. It is thus settled in law that the defendant’s disputed signature on suit promissory note are not comparable with his signatures on written statement or/and vakalat executed in the same suit, for expert opinion.

34. In view of the above consideration, this Court does not find any illegality in the impugned order passed by the learned Trial Court.

35. No case for interference is made out in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India and particularly, considering both the grounds together, for rejection of the petitioner’s application.

36. The petition is devoid of merit and deserves to be dismissed.

37. The Civil Revision Petition is Dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

JUSTICE RAVI NATH TILHARI

21st August, 2023.

DNB

Note:

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