



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

**[3311]**

WEDNESDAY, THE SIXTH DAY OF NOVEMBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE MS JUSTICE B S BHANUMATHI**

**CIVIL REVISION PETITION NOS: 1545 & 1546/2023**

**Between:**

Atluri Ram Kiran

**...PETITIONER**

**AND**

Kodali Venkata Subba Rao

**...RESPONDENT**

**Counsel for the Petitioner:**

1. SIVA RAMA KRISHNA KOLLURU

**Counsel for the Respondent:**

1. G VIJAYA BABU

**The Court made the following:**

**COMMON ORDER:**

These two revisions are directed against the orders, dated 20.06.2023, dismissing I.A.No.51 of 2023 and 52 of 2023 in O.S.No.72 of 2020 on the file of the Court of the Principal Junior Civil Judge-cum-XI Additional Metropolitan Magistrate, Gannavaram.

2. Heard *Sri K. Sivarama Krishna*, the learned counsel for the petitioner/defendant and *Sri G.Vijaya Babu*, the learned counsel for the respondent/plaintiff.

3. **C.R.P.No.1545 of 2023** is filed aggrieved by the order in I.A.No.51 of 2023, whereas **C.R.P.No.1546 of 2023** is filed aggrieved by the order in I.A.No.52 of 2023. Since both the applications arise out of the same suit, both the revisions are heard together and are being disposed of together.

4. The parties shall hereinafter be referred to as the plaintiff and the defendant for convenience and clarity.

5. The facts, in brief, are as follows:

a. The respondent/plaintiff filed the suit against the petitioner/defendant for recovery of amount on the basis of a promissory note. There were disputes between the defendant and the son of the plaintiff, by name, Sri Teja, with regard to the business transactions. Both of

them jointly did hotel business in Gannavaram and when the defendant required money for running the business, on the advice of Sri Teja, believing his words, the defendant signed five blank promissory notes mentioning the amount Rs.1,00,000/- and also gave three blank signed cheques and handed over to him. But, the amount was not paid by the financiers to the defendant. When the defendant asked Sri Teja to return those signed documents, he informed the defendant that they were misplaced and would return as and when they were traced. Subsequently, Sri Teja got filed the present suit through his father by altering the digit '1' as '4' in the amount column. As such, the defendant filed these two applications to reopen the suit and to send exhibit A1, suit promissory note, to a handwriting expert.

b. *Per contra*, the plaintiff filed counter denying the averments and further stating that the petitions do not disclose the circumstances warranting reopening of the suit as all the material evidence was lead by both the parties and the Court can decide the issue basing on the admissions of the petitioner. The present petitions are intended to drag on the proceedings in the suit and are liable to be dismissed.

6. The trial Court, after hearing the parties and on a consideration of the material available on record, dismissed I.A.No.52 of 2023 observing that the petition is filed at the stage of arguments, which reveals the

intention of the petitioner to drag on the proceedings and that the petitioner could not establish valid and *bona fide* reasons for sending the suit promissory note to a handwriting expert for opinion, and further, as I.A.No.52 of 2023 is dismissed on merits, I.A.No.51 of 2023 which was filed for reopening of the suit was also dismissed.

7. The petitioner reiterated his submissions in the grounds of revisions.

8. The main contention of the revision petitioner is that the trial Court erred in dismissing the petitions basing solely on the ground of delay in filing and totally ignoring the need to get the opinion of an expert in view of the defence taken specifically in the written statement that the defendant gave five blank signed promissory notes mentioning the amount as Rs.1,00,000/-.

9. On the other hand, the respondent/plaintiff opposed the petitions submitting that the petitioner has not availed the opportunity at the earliest point of time and in spite of filing the written statement long time back with the said contention and it is only at the fag-end of the matter when it reached the stage of arguments, just to delay the disposal of the suit, these petitions were filed.

10. In **Janachaitanya Housing Ltd. vs. Divya Financiers**<sup>1</sup>, the Division Bench answered the reference as follows:

"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."

11. Thus, it is not as if the application under Section 45 of the Evidence Act must be filed soon after the written statement is presented. There may be instances where the necessity to file such application would arise after the oral evidence of certain witnesses is over. In case, the party concerned is able to elicit necessary information or admissions during the course of evidence, the necessity to file an application under Section 45 of the Act may not arise. Nothing prevents the party to a suit to file an application under Section 45 of the Act, even at the stage of arguments.

12. On a perusal of the copy of the suit promissory note in the light of the defence taken in the written statement, this Court is of the view that the opinion of an expert would definitely assist the trial Court in arriving at proper conclusion, and therefore, the relief could have been granted

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<sup>1</sup> AIR 2008 AP 163

by imposing some terms to compensate the hardship caused to the respondent due to the delay. Therefore, because of the refusal to exercise the jurisdiction by the trial Court, this Court needs to interfere with the orders impugned in these revisions.

13. Accordingly, both the revisions petitions are allowed setting aside the orders, dated 20.06.2023, of the Principal Junior Civil Judge-cum-XI Additional Metropolitan Magistrate, Gannavaram, passed in I.A.No.51 of 2023 and 52 of 2023 in O.S.No.72 of 2020. As a sequel, I.A.Nos.51 & 52 of 2023 are allowed, on the condition that the petitioner shall pay the respondent a sum of Rs.5,000/- (Rupees five thousand only) within ten (10) days from the date of receipt of a copy of this order, failing which the petitions shall automatically stand dismissed without any further orders.

The trial Court is further directed to obtain necessary handwriting of the defendant regarding the figures '1' and '4' and instruct the expert to send a detailed report as to whether figure '1' is altered as '4' in the top left column of the pronote, along with reasons for the conclusions and the tools and methods used for examination, supported by necessary record, such as, photo of the enlarged view of the portions examined etc.

Miscellaneous petitions pending, if any, shall stand closed.

**B.S BHANUMATHI, J**

Dt.06-11-2024

Note:- Issue CC by 08-11-2024  
(B/o)  
RAR