

HON'BLE SRI JUSTICE K. SREENIVASA REDDY

Civil Revision Petition No.44 of 2023

Order:

The present Civil Revision Petition has been filed against the order dated 19.12.2022 passed in IA No.927 of 2022 in OS No.110 of 2021 by the learned Principal Senior Civil Judge, Kakinada.

2. The respondent herein/plaintiff filed OS No.110 of 2021 on the file of the learned Principal Senior Civil Judge, Kakinada against the petitioner herein for recovery of money due under a promissory note. Pending the said suit, the petitioner herein/defendant filed IA No.927 of 2022, under Section 45 of the Indian Evidence Act and under Order XXVI Rule 10A and Section 151 CPC, with a prayer to send the suit promissory note dated 09.09.2019, said to have been executed by the petitioner herein, to India Security Press, Nasik Road, Maharashtra, to know the year of manufacturing of the stamp affixed on the promissory note.

3. The petitioner herein in her affidavit filed in support of the petition stated that she never executed the alleged promissory note in the year 2019 and even in the cross-examination her counsel made a suggestion that the stamp affixed on the alleged promissory note is of the year 2021, but not of the year 2019. She further stated that she

had no personal acquaintance with the respondent herein in the year 2019 and that the stamp affixed on the alleged suit promissory note is not of the year 2019, therefore in order to ascertain the said fact it is essential to send the aforesaid document to the Government Printing Press, Nasik.

4. On the other hand, the respondent herein denied the averments contained in the affidavit filed in support of the petition on the ground that the said plea was not taken by the petitioner at earliest point of time and she comes up with the present petition at a belated stage.

5. Heard both sides.

6. On a perusal of the material on record goes to show that the suit is filed by the respondent herein against the petitioner herein for recovery of amount based on the alleged suit promissory note. When the suit was coming up for defendant's side evidence, the petitioner herein filed the present application under Section 45 of the Indian Evidence Act. The main contention of the petitioner herein is that as the respondent herein is stranger to her in the year 2019, the question of execution of suit promissory note in that year does not arise and for proper adjudication of the matter and for arriving at a just decision with regard to age of the revenue stamp affixed on Ex.A1 promissory note, it is essential to send the said document to the Government of India Security Press, Nasik, Maharashtra.

7. Learned counsel for the petitioner has relied upon a decision reported in **Thiruvengada Pillai v. Navaneethammal**¹, wherein the Hon'ble Supreme Court held thus.

"13. If a person wants to create or a back-dated agreement, the first hurdle he faces is the non-availability of stamp paper of such old date. Therefore tampering of the date of issue and seal affixed by the stamp vendor, as also the entries made by the stamp vendor, are quite common in a forged document. When the agreement is dated 5.1.1980, and the stamp papers used are purchased in the years 1973 and 1978, one of the possible inferences is that the plaintiff not being able to secure an anti-dated stamp paper for creating the agreement (bearing a date prior to the date of sale in favour of second defendant), made use of some old stamp papers that were available with him, to fabricate the document. The fact that very old stamp papers of different dates have been used, may certainly be a circumstance that can be used as a piece of evidence to cast doubt on the authenticity of the agreement. But that cannot be a clinching evidence. There is also a possibility that a lay man unfamiliar with legal provisions relating to stamps, may bona fide think that he could use the old unused stamp papers lying with him for preparation of the document and accordingly use the old stamp papers.

¹ 2008 (4) SCC 530

14. Section 45 of the Indian Evidence Act, 1872 relates to 'opinion of experts'. It provides inter alia that when the court has to form an opinion as to identity of handwriting or finger impressions, the opinion upon that point of persons specially skilled in questions as to identity or handwriting or finger impressions are relevant facts. Section 73 provides that in order to ascertain whether a finger impression is that of the person by whom it purports to have been made, any finger impression admitted to have been made by that person, may be compared with the one which is to be proved.

These provisions have been the subject matter of several decisions of this Court.

14.1) In *The State (Delhi Administration) v. Pali Ram* [1979 (2) SCC 158] this Court held that a court does not exceed its power under section 73 if it compares the disputed writing with the admitted writing of the party so as to reach its own conclusion. But this Court cautioned :

"Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted

writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

The caution was reiterated in *O. Bharathan vs. K. Sudhakaran*, 1996 (2) SCC 704. Again in *Ajit Savant Majagvai v. State of Karnataka* [1997 (7) SCC 110] referring to section 73 of the Evidence Act, this Court held :

"The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the dispute signature with the admitted signature as this power is clearly available under Section 73 of the Act."

14.2) In *Murari Lal v. State of Madhya Pradesh* - 1980 (1) SCC 704, this Court indicated the circumstances in which the Court may itself compare disputed and admitted writings, thus :

"The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusions. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence."

The decision in *Murari Lal* (supra) was followed in *Lalit Popli v. Canara Bank & Ors.* [2003 (3) SCC 583].

8. Learned counsel for the petitioner has also relied upon a decision reported in **Gopal Singh v. Balwinder Singh**², wherein the Hon'ble Supreme Court held thus.

"In Nirbhai Singh's case, the Court had found that the stamps affixed on the pro-note and receipt dated 30.09.2001 were of 20 paise, whereas after the amendment in the year 1994, revenue stamp of Rs.1/- was required to be used. Thus, prima facie case was made out for the purpose of examination of the age of the stamp. In the said case, it was also observed that had it been a plea of the defendant that later stamps have been used on a previously executed pro-note, then it would have called for an examination by the Government Security Press, Nasik, to determine the age of the stamp, but here is a case in which the defendant himself has alleged that the stamps are of the year 2001 and the pro-note and receipt are of 2005, for which there is no legal bar, as held in Nachhattar Singh's case, in using the stamp of the earlier date for executing a pro-note or any such document."

9. In the case on hand also, the plea of the petitioner herein is that the stamp on the suit promissory note was of the year 2021 and the promissory note receipt was of the year 2019 and except the said point, no other point has been raised. In view of the same and in view of the principles laid down in the aforesaid decisions, this Court is

² 2014 Law Suit (P&H) 2938

of the opinion that an opportunity can be given to the petitioner herein to enable her to send the document to the Government of India Security Press, Nasik, Maharashtra.

10. Accordingly, the Civil Revision Petition is allowed and the impugned order dated 19.12.2022 passed in IA No.927 of 2022 in OS No.110 of 2021 by the learned Principal Senior Civil Judge, Kakinada is hereby set aside. Learned Principal Senior Civil Judge, Kakinada is directed to send the suit promissory note dated 09.09.2019 to the Government of India Security Press, Nasik, Maharashtra, to know the year of manufacturing of the stamp affixed on the said promissory note, within a period of two (2) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

K. SREENIVASA REDDY, J.

Date:24.01.2024
Nsr

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