

(2008) 07 AP CK 0061
In the Andhra Pradesh High Court
Case No : CRP No. 2456 of 2008

V. Chidambara Reddy

APPELLANT

Vs

K. Govinda Reddy

RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151
Evidence Act, 1872 — Section 45, 73

Citation : (2008) 5 ALD 325 : (2008) 6 ALT 312

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : S. Syam Sunder Rao, for the Appellant; A. Narasimha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This civil revision petition is directed against the order dated 16.4.2008 passed in IA No. 97 of 2008 in AS No. 127 of 2007 on the file of the Principal District Judge, Kurnool, whereby the application filed u/s 45 of the Indian Evidence Act (for brevity "the Act") read with Section 151 CPC to send Ex.B1 - receipt to the handwriting expert for comparison of the alleged signature of the respondent-plaintiff and ascertain his report, was dismissed.

2. The matter is coming up for admission.

3. Sri S. Syam Sunder Rao, learned Counsel for the revision petitioner, would maintain that the learned Principal District Judge, Kurnool, had totally erred in dismissing IA No. 97 of 2008 in AS No. 127 of 2007 for the reason that this application was filed u/s 45 of the Act read with Section 151 CPC to send Ex.B1 receipt to the handwriting expert for comparison of signature and to such a case the provisions of Order XLI Rule 27 CPC cannot be made applicable. The Counsel, while further elaborating his submissions, would also maintain that even if it is to be considered that when such an application is moved, the ingredients of Order XLI Rule 27 CPC are to be satisfied, in fact, the said ingredients are satisfied in

the present case. Hence, in the light of the facts and circumstances, instead of sending the disputed document Ex.B1 to handwriting expert for the purpose of comparison of signatures, dismissing the petition cannot be justified. The learned Counsel would also maintain that the decisions on which reliance was placed by the learned Judge are not relevant for the purpose of deciding the present application.

4. On the contrary, Sri Narasimha Reddy, learned Counsel representing the respondents, would maintain that the Counsel had entered appearance by lodging Caveat. The Counsel would also maintain that Order XLI Rule 27 CPC may be applicable or may not be applicable when an independent application u/s 45 of the Act for sending the document to an expert had been moved at the stage of appeal, in a way, the result of allowing the application and sending the document to an expert would amount to reception of additional evidence. Hence, strictly, it cannot be said that Order XLI Rule 27 CPC has no application at all to such a case. The Counsel would also maintain that be that as it may, that is not the only reason on which the application had been dismissed. The learned Counsel would also maintain that it is not as though the petitioner-appellant has no remedy, the Court can as well compare the signatures u/s 73 of the Act. Even otherwise, the trial Court, recorded a finding relating to the admissibility of Ex.B1 on the ground of want of stamp duty and penalty and the said order in a way had attained finality. Since the same has not been challenged, maybe the same ground may also be decided in the appeal, but in the light of the convincing reasons recorded by the learned Judge, the impugned order does not suffer from any illegality whatsoever and civil revision petition is liable to be dismissed.

5. Heard the learned Counsel for both the parties and perused the material placed on record.

6. The revision petitioner-appellant filed an application IA No. 97 of 2008 in AS No. 127 of 2007 u/s 45 of the Act read with Section 151 CPC to send Ex.B1-receipt to the handwriting expert for comparison of the alleged signature of the respondent-plaintiff and ascertain his report. The petitioner-appellant is the defendant in OS No. 1426 of 2004 and he had taken the plea that the suit promissory note was discharged and the plaintiff had admitted the payment of Rs. 30,000/- made in four months after the execution of the suit promissory note and also the issuance of a receipt. The revision petitioner filed an unstamped receipt signed by the respondent-plaintiff. The respondent-plaintiff pleaded that the amount of Rs. 30,000/- which was paid by the petitioner was only towards partial discharge but not towards full discharge. The respondent-plaintiff denied the signature on the receipt, which was marked as Ex.B1 subject to objection. Certain other facts relating to the filing of the chief-examination affidavit and other facts also had been narrated.

7. The respondent filed a counter in the application taking a specific stand that he had denied the execution of Ex.B1 and admitted about the receiving of Rs. 30,000/- from the petitioner towards partial payment of the debt. The

respondent made an objection at the time of marking Ex.B1. The petitioner never tried to pay the stamp duty and penalty either at the time of filing the written statement or even at the time of the chief-examination affidavit. Further, specific stand had been taken that the petitioner had not paid the stamp duty and penalty knowing fully well that Ex.B1 is a fabricated one. It was also stated that the trial Court had considered Ex.B1 and disbelieved it. Further stand had been taken that if Ex.B1 is referred to handwriting expert for opinion, it would amount to allowing additional evidence in the appeal and as per Order XLI Rule 27 CPC, the additional evidence can be considered only as per the procedure contemplated by C.P.C.

8. The learned Judge, having formulated the point for consideration at Paragraph 4 of the impugned order, recorded the reasons at Paragraphs 5, 6, 7 and 8 and ultimately came to the conclusion that in the light of Order XLI Rule 27 CPC and also in view of the provisions contemplated u/s 73 of the Act that the Court itself can compare the signatures and the application is not bona fide, and accordingly, dismissed the application.

9. The learned District Judge had referred to various judgments such as *Fakhruddin v. The State of Madhya Pradesh* AIR 1967 SC 1326 (V 54 C 276), *K. Narayanappa v. B.R. Mohan Rao* 1984 (2) APLJ (S.N.) 47, *Ajit Savant Majagavi Vs. State of Karnataka*, , *Mathew Jacob Vs. Ms.Salestine Jacob and another*, , *Mandala Madhava Rao Vs. Mandala Yadagiri and others*, and *Jammala Ramulu and others Vs. Jammala Rajaiah and others*, .

10. It is no doubt true that when an application u/s 45 of the Act read with Section 151 CPC is filed at the appellate stage and in the event of such an application being allowed by the Appellate Court in a way it would amount to receiving additional evidence at the appellate stage. Hence, it cannot be said that when the Court applied its mind while deciding such an application taking into consideration the provisions of Order XLI Rule 27 CPC, and making certain observations and recording certain findings by the learned Judge cannot be found fault with.

11. Apart from this aspect of the matter, it is not as though the petitioner is remediless. Even otherwise, the Court is empowered to compare the signatures u/s 73 of the Act. This is yet another ground on which the application had been dismissed by the learned Principal District Judge, Kurnool.

12. Hence, viewed from any angle, especially in the light of the detailed reasons recorded by the learned Principal District Judge, this Court is satisfied that the order impugned is perfectly justified and needs no interference. Hence, the civil revision petition being devoid of merits the same shall stand dismissed at the admission stage. No order as to costs.