DAMARA VENKATA MURALI KRISHNA RAO

v.

GURUJUPALLI SATVATHAMMA

(Civil Appeal No. 4364 of 2008)

JULY 14, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Evidence Act, 1872 – s. 45 – Expert opinion – Sought for comparison of signature of a witness– At the stage of arguments in a suit for recovery of money – Rejected by trial court – Rejection confirmed by High Court on the ground that application was filed with a view to protract the litigation – On appeal, held: In view of the facts of the case, finding of High Court not correct – Direction to trial court to dispose of the application.

Respondent had filed a suit against the appellant-defendant for recovery of certain amount on the basis of a promissory note. Appellant took the plea that in the course of transactions with the son of the respondent-plaintiff, he had discharged his liability by paying the amount under Exbts B-1 to B-12 (Receipts issued by son of the plaintiff). At the time of arguments, appellant unsuccessfully filed application for reopening the case and examine the son of the respondent as a witness. The son of the respondent was later examined as CW-1 on the direction passed by the High Court. CW-1 denied his signatures on Exbts B-1 to B-12. Appellant, thereafter filed application u/s 45 of Evidence Act, 1872 seeking to send the Exbts. to Government Expert for comparison of the signatures of CW-1 on the Exbts. with his admitted signatures. Trial court dismissed the application. High Court dismissed the revision petition thereagainst, holding that the conduct of the appellant in filing application was only with a view to protract the litigation. Hence the present appeal.

Partly allowing the appeal, the Court

A **HELD: The factual scenario goes to show that cross examination was conducted on 24.7.2006 and the application in question was filed on 1.8.2006. The application was filed in terms of order XIX Rule 1 CPC. The conclusions of the High Court, that the sole object in making the**
B **application was to protract the litigation, is not factually correct. The earlier Civil Revision Petition was disposed of on 29.3.2006. On 24.7.2006, son of the respondent (CW 1) was examined after being summoned. The occasion for making the application arose only after such exami-**
C **nation, on account of the statements made denying the suggestions. The application was made immediately on 1.8.2006. In view of the above, order of the High Court is set aside. Trial Court shall pass necessary orders in terms of the prayer made by the appellant. [Paras 4 and 5] [936-**
D **G & H; 937-A,B & C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4364 of 2008

From the final Judgment/Order dated 28.9.2006 of the High Court of Judicature Andhra Pradesh at Hyderabad in Civil Re-
E vision Petition No. 4100 of 2006

Y. Raja Gopala Rao, Y. Ramesh, Y. Vismai and B.V. Niren for the Appellant.

The Judgment of the Court was delivered by

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Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of learned Single judge of the Andhra Pradesh High Court dismissing the Civil Revision Petition filed by the appellant. Challenge in the
G Civil Revision Petition was to the order dated 7.8.2006 passed in I.A. 546 of 2006 in OS No. 9 of 2004 on the file of learned Senior Civil Judge at Bobbil. Learned Senior Civil Judge had dismissed the application filed by the defendant i.e. present appellant for action in terms of Section 45 of the Indian Evi-

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dence Act, 1872 (in short the 'Act'). Prayer was to send Exh. B1 to B12 to Government Expert for comparison of signatures of CW 1 therein with the admitted signatures appearing on his deposition and summons served on him.

3. Background facts in a nutshell are as follows:

The respondent-plaintiff filed a suit against the petitioner defendant for recovery of Rs.2,28,150/- basing on a promissory note purportedly executed by him over Rs.1,50,000/- on 25.3.2001 and executed a suit promissory note agreeing to repay the same with 18% interest. The petitioner-defendant disputed the suit promissory note. He took the plea that he had some transactions with the son of the plaintiff and towards the said transactions he had paid various amounts under Exs. B 1 to B 12 and he discharged his liability by paying the amount on various dates. The plaintiff closed his evidence and so also the defendant. When the case came up for arguments, the petitioner-defendant filed I.A. No. 432 of 2005 with a prayer to reopen the case for his evidence and I.A. No. 433 of 2005 to summon the son of the plaintiff by name Garujupalli Sriramamurthy and the said applications were dismissed by the trial court. The petitioner filed C.R.P. Nos. 4684 & 4883 of 2005 and this Court by order dated 29.3.2006 allowed the Civil Revision petitions and thereby permitted the petitioner-defendant to summon the son of the plaintiff by name Garujupalli Sriramamurthy.

The relevant portion of the order passed by the High Court in the aforesaid CRPs reads as under:

> "The trial Court took the view that once the evidence is closed, it cannot be reopened. It is rather difficult to accept such a wide proposition. The very occasion to reopen the evidence would arise, after it is closed. Further, it is not as if that the suit was pending for several years and that the petitioner is indifferent in taking necessary steps. Between the date of filing of the suit and filing the instant applications, there was hardly one year gap. The petitioner deserves to be given an opportunity, so that there can be effective

A adjudication from all possible angles.

For the foregoing reasons, the Civil Revision Petitions are allowed and the orders under revisions are set aside. Consequently, I.A. Nos. 432 and 433 of 2005 shall stand allowed. The trial court shall take necessary steps for summoning the son of
B the respondent, by name Gurujubilli Sriram Murthy. There shall be no order as to costs."

In terms of the order passed by the High Court in the above referred CRPs, the trial Court issued summons to the son of the
C plaintiff by name Garujupalli Srirammurthy. He came to be examined as CW 1. During the course of evidence, the petitioner-defendant invited the attention of the witness to Exs. B.1 to B. 12 receipts said to have been issued by him. The witness denied the signatures appearing on Exs. B 1 and B 12. The trial
D Court closed the evidence and posted the case for arguments. Again, the petitioner filed IA No. 546 of 2006 purportedly under Section 45 of the Act with a prayer to send Exs. B.1 to B.12 to Government Expert for comparison of the signatures of C.W.1 appearing thereon with his admitted signatures appearing on the deposition as well as summons served on him. The plaintiff
E resisted the said application by filing counter. The learned trial judge on considering the material brought on record and on hearing the counsel for both the parties dismissed the application by order dated 7.8.2006. It was held that the opinion of the expert is not conclusive proof but it is only a piece of evidence.

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The High Court dismissed the application primarily on the ground that intention of the appellant is to protract the litigation. It was noted that the very conduct of the appellant in making an application to send Exhs. B1 to B12 to hand writing expert after
G the close of the evidence and when the case came up for argument indicated that the object was to protract the litigation.

4. Learned counsel for the appellant submitted that the High Court has proceeded on erroneous premises. The cross examination was conducted on 24.7.2006 and the application in
H question was filed on 1.8.2006. The application was filed in

terms of order XIX Rule 1 of the Code of Civil Procedure, 1908 (in short the 'CPC'). There is no appearance on behalf of the respondent. The conclusions of the High Court, that the sole object in making the application was to protract the litigation, is not factually correct as the factual scenario goes to show. The earlier Civil Revision Petition was disposed of on 29.3.2006. On 24.7.2006, son of the respondent (CW 1) was examined after being summoned. According to the appellant, the occasion for making the application arose only after such examination, on account of the statements made denying the suggestions. The application was made immediately on 1.8.2006.

5. In view of the above, we set aside the impugned order of the High Court. Trial Court shall pass necessary orders in terms of the prayer made by the appellant. The appeal is allowed to the aforesaid extent without any order as to costs.

K.K.T. Appeal partly allowed.