

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.2 of 2025

Between:

Velagapudi Kishore Kumar

..... PETITIONER

AND

Boppana Venkata Naga Krishna

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **05.03.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
+ CIVIL REVISION PETITION No.2 of 2025

% 05.03.2025

Velagapudi Kishore Kumar

....Petitioner

Versus

\$ Boppana Venkata Naga Krishna

....Respondent

! Counsel for the Petitioner: Sri Sai Gangadhar Chamarthy

^ Counsel for respondent : ---

< Gist :

> Head Note:

? Cases Referred:

1. (1971) 1 SCC 396
2. 2023 SCC OnLine Bom 2431
3. Misc.Petition No.3093/2018
HC of Rajastan
4. 2017 SCC OnLine Hyd 74
5. 2019 SCC OnLine AP 72
6. (2017) 3 ALD 579
7. (2017) 3 ALT (Cri) 203 (A.P)
8. 2010 SCC OnLine Mad 562
9. (2014) 1 ALT 636
10. CRP.2680 of 2023, decided on
5.12.2023, APHC, Amaravathi
11. 2008 (4) ALD 339 (DB)
12. 2024 (1) ALT 173

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**CIVIL REVISION PETITION No. 2 of 2025****JUDGMENT:**

Heard Sri Sai Gangadhar Chamorthy, learned counsel for the petitioner and perused the material on record.

2. This civil revision petition under Article 227 of the Constitution of India has been filed by the defendant challenging the Order dated 26.11.2024 in I.A.No.700 of 2024 in O.S.No.1141 of 2019 on the file of the Court of the Rent Controller-cum-IV Additional Civil Judge (Junior Division)-cum-IV Additional Judicial Magistrate of First Class, Vijayawada, Krishna District.

3. The respondent is the plaintiff. He filed O.S.No.1141 of 2019 for recovery of money based on the promissory note. The plaintiff's case was that the defendant had borrowed an amount of Rs.12,00,000/- from the plaintiff on 20.03.2018 for business purposes and family necessities and a promissory note in the presence of the scribe and attestors was executed in favour of the plaintiff on the same day agreeing to repay the loan amount with interest @24% per annum with compound interest either to the plaintiff or to his order on demand. The plaintiff had been constantly approaching the defendant for repayment. Towards part payment of the principal and interest, the defendant issued a cheque for an amount of Rs.10,00,000/- on 20.03.2019 and as per the instructions of the defendant, the said cheque was presented for clearance on 18.05.2019, but the same was returned on 20.05.2019 with a memo for the reason of 'funds insufficient'. The defendant did not repay and therefore the

suit was filed for an amount of Rs.15,75,400/- with subsequent interest @24% per annum against the defendant.

4. The defendant filed written statement and denied the plaint averments. The defendant submitted that he never borrowed any amount and never executed any promissory note nor issued the cheque. The defendant had no necessity to borrow such a huge amount as he was having sufficient bank balance. There were some disputes which arose amongst the defendant, his father and brother and in connection therewith, they, in connivance with the plaintiff got fraudulently pressed into service the alleged promissory note and cheque which were never executed or issued by the defendant. There was no relationship of creditor and debtor between the plaintiff and the defendant and there was no legally enforceable debt due to the plaintiff by the defendant.

5. In the said suit, the defendant filed I.A.No.700 of 2024 under Section 45 of the Indian Evidence Act and under Section 151 CPC to send the promissory note dated 20.03.2018 to the Work Manager Revenue Stamp Examiner, Nasik, Maharashtra for examination and find out the period in which the revenue stamp worth Rs.1/- affixed on the suit printed promissory note, and the age of the ink in the pen used for filling up the suit printed promissory note and subscription of the signatures on the revenue stamp affixed thereon, the attester and scribe and to submit a detail report.

6. The plaintiff/respondent filed objections/counter and denied the contents of the application and further submitted that the application was filed to protract the proceedings of the suit. The defendant had not taken the plea

of forgery. Previously, the defendant had filed I.A.No.865 of 2022 for the same purpose, with the same relief on 28.09.2022 for sending the same promissory note Ex.A1 to the Director, Forensic Science Laboratories, Lakadikapool, Hyderabad. The said I.A.No.865 of 2022 was dismissed on 30.11.2022. The plaintiff prayed to reject I.A.No.700 of 2024, in view of the objections raised.

7. The learned trial Court vide Order dated 26.11.2024 rejected I.A.No.700 of 2024.

8. Learned counsel for the petitioner submitted that the report from the Telangana Forensic Science Laboratory, or the endorsement by Forensic Science Laboratory, Thiruvananthapuram or from BARC was no bar to file fresh application I.A.No.700 of 2024. He submitted further that the finding of the learned trial Court that there was no scope of scientific investigation was erroneous and unsustainable, placing reliance in the direction dated 13.02.2023 in CRP No.35 of 2023, as also being contrary to such direction.

9. I have considered the aforesaid submissions and perused the material on record.

10. So far as the previous I.A.No.865 of 2022 is concerned, the same was filed with respect to the same promissory note Ex.A1 to send the same to the Director, Forensic Science Laboratory, Hyderabad for finding out the period during which the revenue stamp worth Rs.1/- affixed on the suit promissory note was printed and the age of the ink in the pen used for filling up the suit printed promissory note and subscription of the signatures on the revenue stamp affixed thereon and also affixed by the scribe and attester and submit a

detailed report. The said application was opposed by the plaintiff, and after contest, the learned Court dismissed the I.A.No.865 of 2022 on 30.11.2022. Being aggrieved, the defendant filed CRP No.35 of 2023. The same was allowed by this Court. The Order dated 30.11.2022 was set aside and I.A.No.865 of 2022 was allowed with direction to the learned trial Court to refer the promissory note for expert opinion, as was requested by the defendant in the said I.A. It needs mention here that, I.A.No.865 of 2022 was filed under Order 26 Rule 10A CPC and Section 151 CPC, which provision related to the appointment of the advocate-commissioner, though the prayer made therein was for sending the dispute promissory note to the Director, Forensic Science Laboratory, Hyderabad. The learned trial Court had dismissed the said I.A. on the ground that the advocate-commissioner was not a scientific expert and did not consider the facts and prayer in the application. This Court observed that the learned Court wrongly came to the conclusion that the said application was filed for appointment of advocate-commissioner, and consequently, the application was not dealt with by learned trial Court in right perspective. Therefore, CRP No.35 of 2023 was allowed by this Court, vide order dated 13.02.2023 with the following directions:

- (i) "The Order dated 30.11.2022 in I.A.No.865 of 2022 in O.S.No.1141 of 2019, on the file of the IV Additional Junior Civil Judge, Vijayawada is set aside; and
- (ii) Consequently I.A.No.865 of 2022 is allowed and the Court below is directed to refer the promissory note for expert opinion as sought in the said Application;"

11. It is evident from the order dated 26.11.2024 impugned in this petition, which fact is not in dispute that, after the judgment in CRP No.35 of 2024, the promissory note was sent by the defendant to the Telangana State Forensic Science Laboratory (TSFSL) for ascertaining the age of the ink and age of the writings, but the document was returned vide letter dated 03.07.2023 in File No.DOC/GEN/2023/13-AP, by observing that it was not possible to ascertain the age of ink/age of writing/signature and age of paper/age of revenue stamp in TS FSL, Hyderabad. The learned trial Court also sent the document to the Director, Forensic Laboratory, Thiruvananthapuram, but the same was returned vide letter No.B2-11948/FSL/2023, dated 23.01.2024 with endorsement that there was no scientific technique to ascertain the absolute age of the ink in writings/signatures. The impugned order further shows that, subsequently also, the document Ex.A1 was sent to the Neutron Activation Analysis, Mumbai, Bhabha Atomic Research Centre, Mumbai (in short 'BARC'), vide letter in Dis.No.341, dated 26.04.2024, as per the orders of this Court in CRP No.35 of 2023 but from there also, the document was returned, vide letter dated 03.06.2024 with endorsement that BARC did not have expertise to determine the age of the ink, used in writings and also the age of revenue stamp.

12. In view of the aforesaid circumstances, the subsequent action which has taken place, after the order of this Court in the CRP.No.35 of 2023, the learned trial Court observed in the impugned order, that there was no specific science to ascertain the age of the ink in writings. The defendant had filed I.A.No.700 of 2024 for examining the age of the ink and age of the stamp,

again, in spite of the knowledge about the return of the document Ex.A1 from three laboratories, on the ground that there was no scientific analysis to ascertain the age of the ink and on the revenue stamp. The learned trial Court rightly observed that the opinion could be obtained from the expert, if there was any science relating to the examination of age of the ink and for fixing the age of the ink. As from the three science laboratories in India, the document was returned with the reports that there was no authenticated procedure for ascertaining the age of the ink, the application filed by the defendant was held to be misconceived, without *bona fides*; and only with the intention of the defendant to drag on the proceedings of the suit.

13. Learned counsel for the petitioner, could not dispute about the reports from the three forensic science laboratories, viz., TS FSL, Hyderabad, FSL, Thiruvananthapuram and BARC, Mumbai that there was no science to ascertain the age of the ink or examination of the age of the ink or writing. All the aforesaid three reports from three different laboratories, are after the date of the judgment dated 13.02.2023 in CRP No.35 of 2023. It is not that the learned trial Court was placing reliance on the same documents or the reports which were the subject matter of the previous CRP No.35 of 2023. As is evident from the reading of the judgment in CRP No.35 of 2023 that, CRP was allowed as the petitioner's previous I.A.No.865 of 2022 was not considered in the correct perceptive by the learned trial Court and was rejected previously on the ground that the application was filed under Order 26 Rule 10A CPC which related to the appointment of the advocate-commissioner, which had no

expertise to determine the prayer of the petitioner. This Court in the CRP No.35 of 2023 did not consider, as the same was not the issue before the Court at that stage, whether the prayer of the petitioner for determining the age of the ink could be ascertained from the scientific mechanism from any of the laboratories. The previous application was allowed with direction to refer the promissory note for expert opinion as was requested in the application, which was the prayer made by the petitioner but was not considered by the learned Court on the ground of quoting of the wrong provision of law.

14. Consequently, the submission advanced by the learned counsel for the petitioner based on the order passed in CRP.No.35 of 2023, that in view thereof the rejection of the I.A.No.700 of 2024 cannot be sustained, is wholly unsustainable. The learned trial Court, pursuant to that order sent the document to the forensic laboratories, but in view of the reports of all the three laboratories that it was not so possible, as there was no such science, rejected the I.A.No.700 of 2024, which cannot be said to be contrary to or vitiated in view of, the Order dated 13.02.2023 passed in CRP No.35 of 2023.

15. In ***Union of India v. Jyoti Prakash Mitter***¹ with respect to the examination of the horoscope, its genuineness with particular reference to the age of the paper on which the horoscope had been prepared, the age of the ink used, and the age of the writing, it was observed that there was some correspondence between the Director of the Central Forensic Institute, Calcutta and the Ministry of Home Affairs. The Commandant of the Institute opined that

¹ (1971) 1 SCC 396

it was extremely difficult to solve dating problems in a completely satisfactory manner. It was further observed in the said case that after consultation between the Ministry of Home Affairs and the Ministry of Law, the Home Ministry sent certain old writings and requested the Director to determine the age of the writing and in response, the Director wrote that it "was impossible to give any definite opinion by such comparisons particularly when the comparison writings were not made with the same ink on similar paper and not stored under the same conditions as the documents under examination", and that it "will not be possible for a document expert, however, reputed he might be, anywhere in the world, to give any definite opinion on the probable date of the horoscope and the ink writing in the margin of the almanac".

16. Paragraphs-10 and 11 of *Jyoti Prakash Mitter* (supra) are reproduced as under:

"10. There was some correspondence between the Director of the Central Forensic Institute, Calcutta and the Ministry of Home Affairs. The Commandant of the Institute opined that it was "extremely difficult to solve dating problems in a completely satisfactory manner". He initially sought instructions whether he was at liberty to deface or mutilate the documents, because the "test required could not be made without extracting parts of the documents, but later wrote that the mutilation of documents by the chemical test was not desirable and moreover that by such application it would not be possible to give an absolute date to the document. Thereafter the Director reported on a 'limited examination' that could be carried out that it was not possible to give any opinion relating to the age of the ink writing on the almanac", but in his view the horoscope could not have been written earlier than 1909, because the paper on which it was written contained bamboo pulp which was not brought into the use by the Titaghur Mills in the manufacture of

paper before 1912. The Director said nothing about the age of the ink in which the horoscope had been written.

11. After consultations between the Ministry of Home Affairs and the Ministry of Law, the Home Ministry sent certain old writings of the years 1904, 1949, 1950 and 1959, and requested the Director to determine the age of the writing of the disputed horoscope and marginal note in the almanac by comparison. The Director on April 17, 1965, wrote that it “was impossible to give any definite opinion by such comparisons particularly when the comparison writings were not made with the same ink on similar paper and not stored under the same conditions as the documents under examination”, and that it “will not be possible for a document expert, however reputed he might be, anywhere in the world, to give any definite opinion on the probable date of the horoscope and the ink writing in the margin of the almanac”.

17. In ***Dnyaneshwar Eknath Gulhane v. Vinod Ramchandra Lokhande***², the Bombay High Court observed that where the exercise is found to be undertaken in futility, the Court will have to be vigilant in entertaining the applications which, even if allowed, has a sealed fate. It also observed, referring to the judgment of the Hon’ble Apex Court in the case of ***Jyoti Prakash Mitter*** (supra), as also the judgment of the ***Manish Singh v. Jeetendra Meera***³ that there was no scientific accurate test available for determination of age of the ink.

18. In ***Dnyaneshwar Eknath Gulhane*** (supra), the Bombay High Court referred in para-8 of the judgment as under:

“8. As could be seen, the Assistant Director, Document Division, Forensic Science Department, Chennai, the expert in the field, has stated that there is no

² 2023 SCC OnLine Bom 2431

³ Misc.Petition No.3093/2018,
HC of Rajasthan

scientific method available anywhere in the State, more particularly in the Forensic Sciences Department to scientifically assess the age of hand writing and to offer opinion. The expert further stated that there is one institute known as Neutron Activation Analysis, BARC, Mumbai, (which the counsel for the respondent referred to), where there is facility to find out the proximate range of the time, during which the writing would have been made but the opinion is not exact and further the facility is available only to atomic research and not to the documents relating to the prosecution and other litigation. He has firmly stated that the age of writing cannot be found out at all to offer any opinion.”

19. In ***Polana Jawaharlal Nehru v. Maddirala Prabhakara Reddy***⁴, the learned single Judge of the combined High Court for the States of Telangana and Andhra Pradesh considered the aspect regarding the determination of the age of the ink by expert and held as under in paragraph-15 as under:

“15. It is an admitted fact that the science relating to forensic examination of Handwriting, especially in relation to the fixation of the age of the ink, is not perfect. In cases of this nature any reference of a document to the Handwriting Expert just for the purpose of finding out whether the ink was 5 years old at the time of institution of the suit or 3 years old at the time of institution of the suit, is not likely to bring any fruitful result. Interestingly in one of the books relied upon by the learned Judge of the Madras High Court, namely Handwriting Forensics by B.R. Sharma, Chapter 25 contains a Glossary under the title Documenpaedia. In the said chapter, there is an interesting portion relating to INK AGE. This portion reads as follows:

INK AGE : Age of the writing can sometime be given in relative terms.

Upkeep of the document plays an important role. Ink has been extensively studied to fix the age of the documents. There are two aspects which have been explored.

⁴ 2017 SCC OnLine Hyd 74

The compositions of inks in common usage have been changing continuously. It was the carbon ink (known as Indian Ink) to start with. It changed to iron tannin inks, then to water-soluble dye inks and later to organic solvent inks as for ball pens. New dye inks are coming up continuously. Thin Layer Chromatography (TLC) can easily identify the ink dye even from an ink line without visibly damaging the writing line. High Performance TLC gives better results. The date of induction of a particular ink, therefore can be ascertained with the help of its manufacturer. If a document is purported to be written prior to its induction of the ink, it is obviously false.

In some countries data relating to induction of various inks is kept for ready reference.

Some inks fade with time. The extent of fading may give some idea about the age of the writing.

Inks diffuse in the paper. The extent of diffusion may give some guess about the age of writing.

Iron inks become darker in colour with age. The shade of the ink may give some idea of the age of writing.

In some countries age marker chemicals, usually radioactive materials, are added to the ink. They indicate the age of the writing.

Fresh ink is easily smudged. Older inks do not smudge easily. The ease of smudging may give a rough estimate of the age of the writing.

The methods listed above look impressive. But in practice it is seldom that correct age of the document can be determined as there are many variables which affect the changes in the ink.

Age markers can give correct age of the writings. However, they are not used in India.”

20. In ***G. V. Rami Reddy v. D. Mohan Raju***⁵, this Court considered the point “*Whether Forensic Expertise to determine the age of ink/pen is*

⁵ 2019 SCC OnLine AP 72

available in our country to refer the disputed document", and observed that there was an organization called Nutron Activation Analysis, BARC, Mumbai, which is a Central Government Organization, which undertakes the task of determining the age of ink/writing of a document. In ***G. V. Rami Reddy*** (supra) the trial Court while rejecting the application seeking to send the promissory note to Forensic Science Laboratory to ascertain the age of the signature, relied upon the case of ***Polana Jawaharlal Nehru v. Maddirala Prabhakara Reddy***⁶ in which it was observed that no useful purpose would be served by referring the document to the handwriting expert as it was highly doubtful, that it was possible for a handwriting expert to fix the age of the ink. With respect to the said judgment, it was observed in ***G. V. Rami Reddy*** (supra) that the previous judgment in the case of ***T. Rajalingam v. State of Telangana***⁷ was not referred in ***Polana Jawaharlal Nehru*** (supra). It was observed that in ***T. Rajalingam*** (supra) the learned Judge observed that the documents, as involved therein, be sent to Nutron Activation Analysis, BARC, Mumbai for determination of the age of the ink, in view of the observation made in another judgment in ***R. Jagadeesan v. N. Ayyasamy***⁸ wherein the learned Judge of the Madras High Court ascertained from the Assistant Director, Document Division, Forensic Science Department, Government of Tamilnadu, Chennai that there was one institution known as Nutron Activation Analysis, Bhabha Atomic Research Centre (BARC), Mumbai, where there was facility to find out the approximate range of the time during which the writing would have

⁶ (2017) 3 ALD 579

⁷ (2017) 3 ALT (Cri) 203 (A.P)

⁸ 2010 SCC OnLine Mad 562

been made and it was a Central Government Organization. Based thereon, in ***G. V. Rami Reddy*** (supra), the point was answered that there was an organization, called Nutron Activation Analysis, BARC, Mumbai, which is Central Government organization, which undertakes the task of determining the age of ink/writing of a document.

21. In ***G. V. Rami Reddy*** (supra), this Court however cautioned the trial Court in the light of the given case, that though the ink or a pen was manufactured in yester years, there was a possibility that a person may either deliberately or unknowingly use such ink/pen to make a writing of signature several years after its manufacture. Therefore, in such an event, mere determination of the age of ink/writing by an expert would not clinch the issue as to when exactly the maker has written/signed the document. This Court placed reliance in the observation made in ***Kambala Nageswara Rao v. Kesana Balakrishna***⁹. Paragraphs-8 and 9 of ***G. V. Rami Reddy*** (supra) read as under:

“8. Point No. 2; Since point No. 1 is held affirmatively, it has now to be seen whether ascertaining the age of the ink/writing on the document is suffice to uphold the contention of the defendant. Of course, I must admit that this aspect relates to the appreciation of evidence on the part of the trial court. However, I venture to frame this point to caution the trial court in the light of a crucial observation made by a learned Judge of the High Court of Andhra Pradesh in *Kambala Nageswara Rao v. Kesana Balakrishna* (5) (2014) 1 ALT 636 = AIR 2014 AP 37, wherein it was observed thus:

“4..... Even while not disputing his signature on the promissory note, the petitioner wanted the age thereof to be determined. Several

⁹ (2014) 1 ALT 636

complications arise in the regard. The mere determination of the age, even if there exists any facility for that purpose; cannot, by itself, determine the age of the signature in a given case, the ink, or for that matter, the pen, may have been manufactured several years ago, before it was used, to put a signature. If there was a gap of 10 years between the date of manufacture of ink or pen, and the date on which the signature was put or document was written, the document cannot be said to have been executed or signed on the date of manufacture of ink or pen.”

9. Therefore, in a given case, though the ink or a pen was manufactured in yester years, there is a possibility that a person may either deliberately or unknowingly use such ink/pen to make a writing of signature several years after its manufacture. In such an event, mere determination of the age of ink/writing by an expert will not clinch the issue as to when exactly the maker has written/signed the document. Therefore, the Courts must take note of this aspect while appreciating the rival contentions. This point is answered, accordingly.

22. Another learned single Judge in ***T. Govinda Raju v. Thikkamreddy Bhaskar Reddy***¹⁰, taking note of ***Polana Jawaharlal Nehru*** (supra), ***G. V. Rami Reddy*** (supra) and ***Janachaitanya Housing Ltd., Hyderabad v. Divya Financiers, Guntur***¹¹, following ***Polana Jawaharlal Nehru*** (supra), declined to interfere with the order passed by the learned trial Court, which rejected the application of the petitioner therein for referring the document to expert for his opinion regarding the age of the ink, also observing that the jurisdiction of this Court under Article 227 of the Constitution of India is to be exercised only in exceptional cases.

¹⁰ CRP.2680 of 2023, decided on 5.12.2023, APHC, Amaravathi

¹¹ 2008 (4) ALD 339 (DB)

23. In ***Velineni Veeraiah v. Nallabothula Mohan Kumar Dharma***¹², where the facts were almost similar to the present case, and where also the application was filed to send the suit promissory note to A. P. Forensic Science Laboratory, Hyderabad to ascertain the age of the ink in signature and remaining portion of the promissory note, which was allowed and the promissory note was sent to the said Forensic Science Laboratory for opinion, but the same was returned, without expressing any opinion stating that they were unable to give an opinion, the petitioner therein filed another petition to send the promissory note to Private Expert at Delhi. The said application was rejected, challenging the same, the civil revision petition was filed. This Court held that there are other modes to prove disputed signatures or handwriting in any document. Seeking opinion of handwriting expert is one of the modes. However, when there was Government Expert's opinion stating that there was no possibility of ascertaining the age of the ink in the document. The application to send the document for the same purpose to a private expert could not be allowed. The order of rejection of the said petition by the learned trial Court was affirmed by this Court.

24. The petitioner has also not said in the memo of revision petition nor it has been specified whether such science is available to determine the age of the ink etc., as per the prayer made and if so, in which laboratory, where the document could have been sent. He has also not disputed the reports of all the three laboratories.

¹² 2024 (1) ALT 173

25. I do not find any illegality in the order of the learned trial Court.

26. Thus considered, the civil revision petition lacks merit and is dismissed. No order as to costs.

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

RAVI NATH TILHARI, J

Date: 05.03.2025
Dsr

Note:
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