

**IN THE COURT OF PRL. SENIOR CIVIL JUDGE ::
AT MEDCHAL, MEDCHAL-MALKAJGIRI,**

Present : **Sri B.Ramesh,**
Prl. Senior Civil Judge,
At Medchal, Medchal-Malkajgiri.

Dated this the 22nd day of February, 2024

I.A.No.673 of 2023
IN
OS.No.535 of 2015

Between :

Deepthi Rajesh D/o Radhaswamy
Aged 49 Years. Occ: Business,
R/o. 74/6, East Maredpally,
Secunderabad.

..Petitioner/defendant No.3

And

1. B. Chakradhari S/o B. Seetharama Sarama
Aged about: 47 Yrs,
R/o. Plot NO.16, RK Housing Society
ECIL Post, Hyderabad - 500062

.... Respondent/ plaintiff

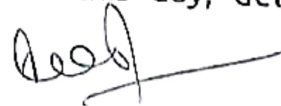
2. C.Shashir S/o C. Rajesh
Aged about: 18 Yrs,
R/o. United Kingdom

3. C. Vithica D/o C. Rajesh
Aged about: 22 Yrs,
R/o United Kingdom

(Respondent No.2 and 3 are pro-forma parties)

...Respondents No.2 and 3 / defendant No.1 and 2

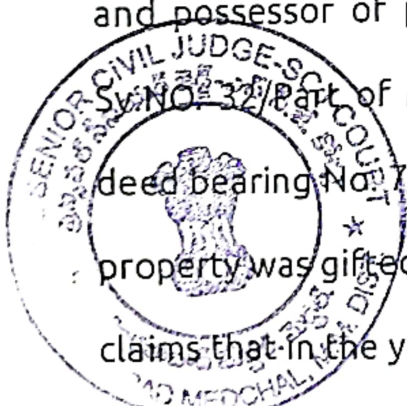
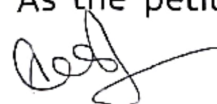
This petition is coming before me for final hearing and disposal in the presence of **Sharadha Gupta**, Advocate for petitioner/defendant No.3 and **M/s M. Sreedhara Murthy**, Advocate for respondent /plaintiff and the matter having stood over for consideration till this day, delivered the following order.



ORDER

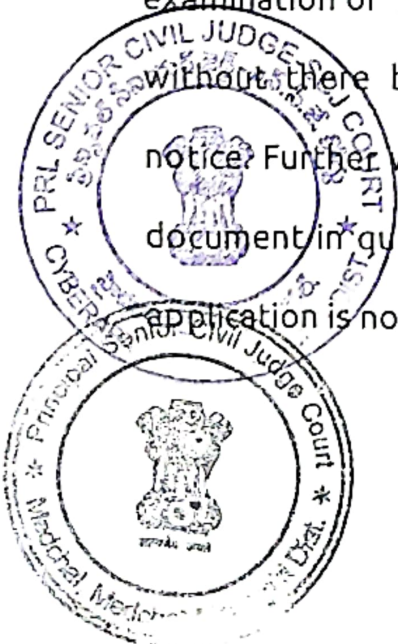
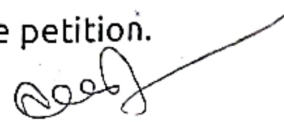
1. The petition filed by the petitioner/ defendant No.3 under section 45 of Evidence Act., to send original agreement of sale deed dt 24.1.2015 for examination of signatures of the petitioner i.e. Smt.Deepthi Rajesh along with the specimen/ sample signatures of Smt. Deepthi Rajesh which are already available with the court for expert opinion to Director of forensic science laboratory Hyderabad to compare the signature on the document dt. 24.1.2015 with other documents .

2. The affidavit filed by the petitioner/ defendant No.3 reveals that the respondent / plaintiff has filed suit for specific performance of contract of sale against defendant no.1 to 3; further the agreement of sale dt. 24.1.2015 is false, forged and concocted document. Infact grandfather of Defendant no. 1 and 2 by name Srikakulam Radha Swamy was the owner and possessor of plot No. 17 and 18 admeasuring 257 sq yards each in Sy.No. 32/Part of Murahari pally. Thereafter, by virtue of registered gift deed bearing No. 7899/2005 and 7898/2005 dt. 17.5.2005 the suit schedule property was gifted to the defendant No.1 and 2. The respondent / plaintiff claims that in the year 2010 an amount of Rs. 12,00,000/- was lent by him to the petitioner / Defendant no.3 and in repayment of loan the agreement of sale in question was executed by the third defendant in the capacity of guardian of defendant No.1 and 2. As the petitioner / defendant No.3



specifically denied these facts by filing written statement and it is her case that there was no necessity for petitioner to raise any loan as she was financially secured person. Further, she was generating sufficient rental income from 2005 itself and had other income source. Therefore, there was no necessity or justification in raising of loan in the year 2010. As the respondent / plaintiff had filed documents with regard to proof of payment of loan on 23.8.2023 thereby to establish the defence version the petitioner / defendant No.3 has filed the present application. Therefore, the present application is just and essential to ascertain whether agreement of sale dt. 24.1.2015 is containing the signature of the petitioner / defendant No.3 to find out the same the present application is filed.

3. Notice given to the respondent / plaintiff who filed Counter stating the petition is not maintainable and further it is filed only to protract the litigation and for wrongful gain. According to the respondents, the plaintiff is entitled for the claim sought in the suit. At the belated stage of chief examination of DW-1 the defence of forgery of agreement of sale is raised without there being any pleadings in the written statement and reply notice. Further without there being any pleading with regard to forgery of document in question, as required under order VI rule 4 CPC, the present application is not maintainable and sought for dismissal of the petition.



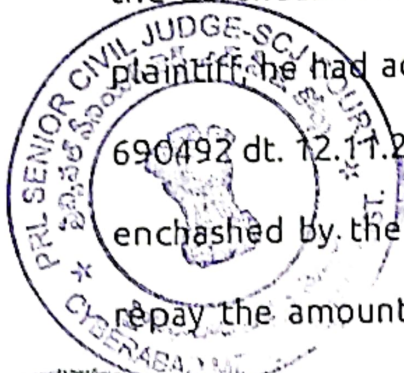
4. Heard both sides and perused the record, including citations filed by the both parties to the petition.

5. Now point for determination is:

i) whether the petitioner/plaintiff is made over the ground for forwarding the agreement of sale dt. 24.1.2015 for expert opinion?

ii) As to what relief?

6. The plaint filed by respondent / plaintiff by name V.Chakradhari indicates that the defendant no.1 and 2 are the absolute owner and possessor of plot No. 17 and 18 in Deepthi villas in Sy.No. 32/Part of Muraharipally; wherein the extent of each plot is 257 sq yards. The third defendant Mr. Deepthi Rajesh is the mother of the defendant no.1 and 2 ; thereby to meet financial requirements and welfare of her children she approached the plaintiff and raised loan of Rs. 12,00,000/- ; as the father of the defendant No.1 and 2 and husband of third defendant is known to the plaintiff, he had advanced loan of Rs. 12,00,000/- through a cheque br. No. 690492 dt. 12.11.2010 drawn on ING vyshya bank Malkagiri. The cheque was encashed by the third defendant. Though the defendant no.3 agreed to repay the amount, but she failed to repay the same. Thereafter she has proposed to offer to sell the suit schedule property for Rs. 15,00,000/-; the plaintiff left with no other alternative was constrained to accept the offer. Accordingly on 24.1.2015 the third defendant in the capacity of mother of

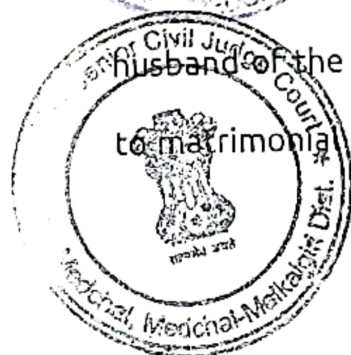
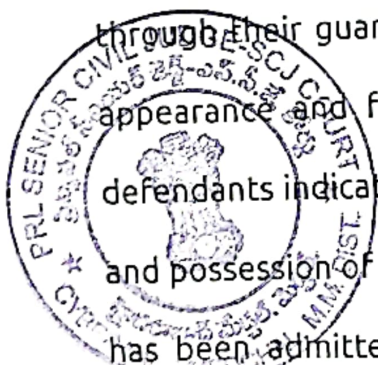


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defendant No.1 and 2 had executed agreement of sale. In the agreement of sale the earlier payment of Rs. 12,00,000/- is also found place. To gain confidence of plaintiff original gift deed executed in favour of defendant No.1 and 2 were also handed over to the plaintiff. As per clause 8 of agreement of sale the mother i.e. defendant nO.3 who is required to take permission from the District court for alienating the minor's property , but inspite of persuasion and request there was no response from the third defendant. Though the plaintiff has been ever ready and wiling to perform his part of obligation by paying Rs. 3,00,000/- within the stipulated period of 100 days from 24.1.2015 the defendants failed to came forward. Thereby, a legal notice was issued on 4.7.2015 calling upon the defendants to execute the sale deed but it was replied on 23.7.2015 will all untenable grounds. Hence suit was filed.

7. On service of summons defendant No.1 and 2 made their appearance through their guardian i.e. defendant no.3. defendant No.3 also made her appearance and filed written statement. The written statement of the defendants indicates that they have denied the suit claim, however the title and possession of the defendant No.1 and 2 over the suit schedule property has been admitted. It is the specific case of the defendants that the husband of the third defendant who is close friend of Pw-1 thereby owing to matrimonial unrest between third defendant with her husband by name



(Signature)

Rajesh and to cause loss to the defendants the plaintiff and husband of the third defendant conspired together and got filed the suit against minors property. It is also contended that the transaction in question is denied preliminary and the loan transaction and other allegations are trash and false. Further handing over of original deed also manipulated one. As per clause 8 of the agreement of sale, a minor's property can only be dealt only with previous permission of the District court and sought for dismissal of the suit.

8. After perusal of pleadings of the parties and after complying section 89 CPC on 29.1.2020 the following issues were settled for trial

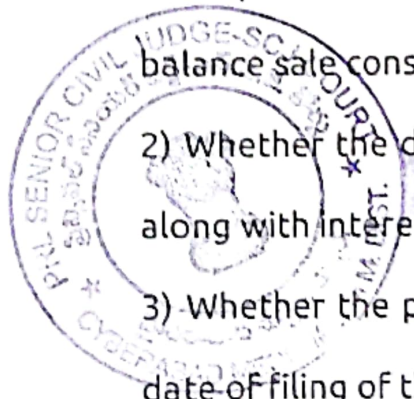
1) Whether the defendant being the minors represented by their mother and natural guardian can be directed to execute and register the sale deed in respect of suit schedule property in favour of plaintiffs by receiving balance sale consideration?

2) Whether the defendants can be directed to pay a sum of Rs. 12,00,000/- along with interest @ 18% per annum from 12.11.2020 to till date?

3) Whether the plaintiff is in physical possession of the property as on the date of filing of the suit?

4) Whether the plaintiff is entitled for perpetual injunction, as prayed for?

5) Whether the suit is filed only to squat on the property?



9. Subsequently on 10.3.2020 as per orders in IA NO. 172/2020 and 173/2020 dt. 10.3.2023 the following additional issues were framed

1)Whether the agreement of sale dt. 24.1.2015 is in contravention of section 8 of Hindu Adoption and guardianship act?

10. Thereafter, trial was commenced wherein plaintiff as completed his evidence at the stage of defendant further evidence the present application is filed.

11. As seen from the record and assertions of petitioner/ defendant no.3 she has been denying and disputing the signature on the original agreement of sale dt. 24.1.2015 thereby the crux of the case is whether an agreement of sale as alleged by the plaintiff was executed on 24.1.2015 if so, whether ^{is} ~~is~~ he ready and willing to perform his part of obligation in this regard. It appears from the record that plaintiff has paid

Rs. 12,00,000/- and payment of remaining Rs. 3,00,000/- is pending. The

defendants No.1 and 2 who are the minors at the time of filing of the suit,

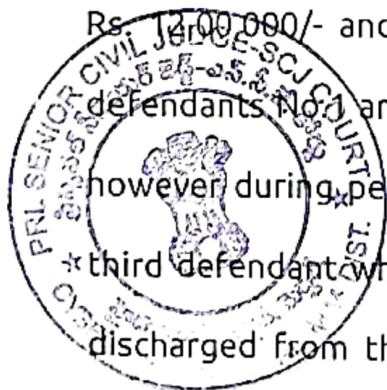
however during pendency of the suit they have attained majority and the

third defendant who is the natural guardian of defendant no.1 and 2 was

discharged from the guardianship of defendant no.1 and 2. The dispute

appears to be whether in the capacity of guardian of D1 and D2 , defendant

no.3 can be permitted to enter in to agreement without taking permission

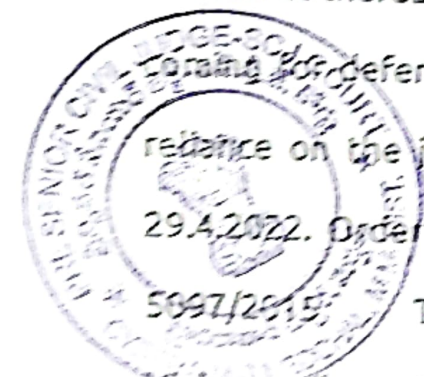


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from the Hon'ble District Court as per the Hindu Minority and Guardianship Act?

12. According to petitioner / defendant No.3 seeking of handwriting expert opinion on the original agreement of sale dt. 24.1.2015 is just and essential. The petitioner / defendant no.3 in her arguments submitted that ordering of expert opinion to find out the hidden truth, the civil court can be permitted to send the document to expert opinion. To this extent relied upon judgment of Saharban Beevi vs. S.Mumtaj CRP No. 30/2012 and M.P. (MD) No.1 of 2012 dt. 14.02.2013 (MANU/TN/0173/2013). Similarly relied upon the judgment of Chikkanna Vs. Lokesh ILR 2001 Karnataka 2681. Ram Avatar Soni vs. Mahanta Laxmidhar Das (2019)11 SCC 415; Chinnasway vs. P.S.Swaminathan 2006 (4) CTC 850. The contention of the respondent / plaintiff as there is no required pleadings in the written statement thereby at the fag end of the trial that to in a suit of pre 2016 is ~~reliance~~ on the judgments in case of CRP No. 2952 and 2953 /2018 dt. 29.4.2022. Order of Hon'ble High court of Telangana and AP in CRP NO. 5097/2015. Tadikamalla Kasi Rathnam Setty vs. Tadikamalla Kasi Vishwanathan MANU/HY/020/2018 wherein petition under section 45 of Evidence Act was dismissed and the same was confirmed in the revision on ground of stage of the suit. It is also contended that unless contemporaneous signatures of Smt. Deepthi Rajesh is not filed, the

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petitioner is
through
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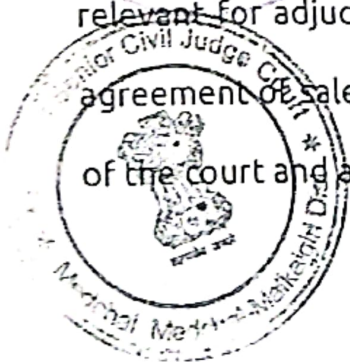
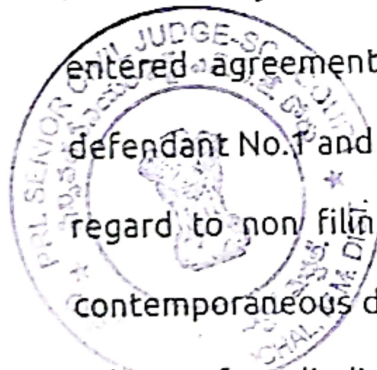


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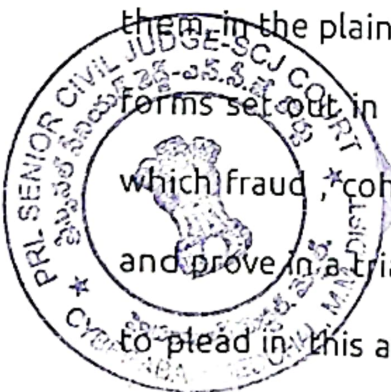
petitioner is not entitled for the relief. This court has carefully gone through the arguments and citations filed by the petitioner and citations filed by the respondent / plaintiff.

13. Admittedly, the suit is filed seeking relief of specific performance of contract of minors property which was entered by the mother of minor defendants as the third defendant. At the instant of the petitioner/ D3 an additional issue was framed by this court with regard to binding nature of the transaction entered by petitioner / D3. Though parties on highly disputed facts and execution and non execution of agreement of sale dt. 24.1.2015; surprisingly when the petitioner /D3 on the capacity on her behalf and in the capacity of guardian of minor defendants, has filed written statement in the year 2015 itself, wherein there is no specific denial of agreement of sale involved in the present suit and it was resisted only on the ground of the locus standi of the petitioner / D3 who entered agreement on behalf of her minor sons who are shown as defendant No.1 and 2. Whether much more arguments were advanced with regard to non filing of contemporary document and what is meant by contemporaneous document, however the same will be subject matter and relevant for adjudication only if the court come to a conclusion that if the agreement of sale or any other document under challenge is in the opinion of the court and as well as the parties to the suit liable for an expert opinion



and report. Thereby this aspect will be discussed at later point of time. However it has to be held that during enquiry of the present petition, the petitioner/ defendant had filed original rental agreement dt. 15.10.2012, and original agreement of lease dt. 2.5.2014, as contemporaneous document and same are received by the court, on 21.2.2024 subject to proof, relevancy and admissibility.

14. The court is bound to express his opinion with regard to objection raised in the counter by the respondent / plaintiff that when the allegation of either forge, fraud, misrepresentation, cohercion if not pleaded whether the document can be sent to expert opinion. Pleadings in a civil litigation assumes important place and any amount of pleading without evidence cannot be permitted. Even if permitted cannot be looked into. Evidence has to lead by the parties basing on the pleadings set out by them in the plaint or in the written statement. Order VI Rule 4 CPC and the forms set out in appendix-A of CPC also indicates how and the manner in which fraud, *cohercion, undue influence, misrepresentation has to plead and prove in a trial. The party setting of the defence of fraud etc., is bound to plead in this aspect and drawing necessary attention, while drafting the pleadings. In this case the written statement by the petitioner /D3 in no way suggest that the signature on agreement of sale dt. 24.1.2015 is not signed by her and infact it is a forged one, unless such foundation is laid in the



pleadings, more particularly as required under order VI rule 4 CPC whether the petitioner /D3 can be permitted to lead evidence, without any corresponding pleading. The answer would be No; because, if such an exercise is undertaken the fundamental rule of civil proceedings plead and prove will be received a severe jolt.

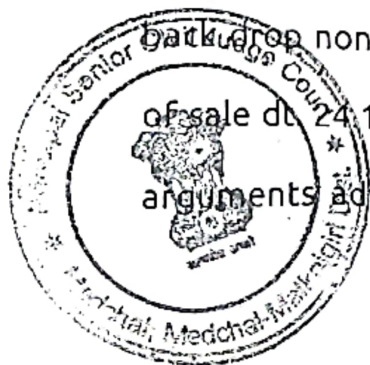
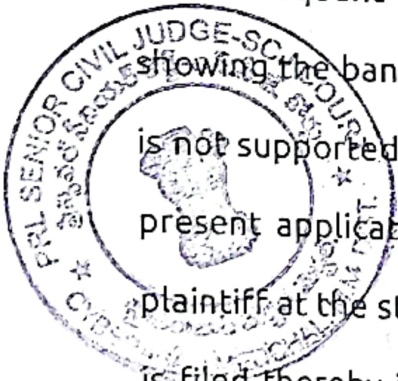
15. No doubt the citation relied upon by the petitioner / defendant No.3 indicates, when party came up with the defence of forgery the expert opinion can be sought so that the issue can be discussed and decided, but the significant fact in the suit is there is no pleading from the petitioner / defendant No.3 with regard to either fraud, forgery of document , now sought for expert opinion. Thereby the judgments cited by learned counsel for petitioner / defendants is not applicable to the case on hand. In other words as the pleadings set out in the written statement by the petitioner / D3 dt. 04.11.2015 is holding the field, thereby she cannot be permitted to travel beyond scope of said pleadings.

17. Coming to other contention of the petition; as the respondent / plaintiff has led evidence with regard to payment of Rs.12,00,000/- and it's encashment, the present application is filed. However, the first para of the plaint itself, the plaintiff has contended as "as the father of the defendant N.1 and 2 and husband of third defendant was known to the plaintiff, the



plaintiff had advanced the sum of Rs. 12,00,000/- to the mother of D1 and D2 through cheque bearing No. 690492 dt. 12.11.2010 drawn on ING Vyshya Bank, Malkajgiri branch. The said cheque was encashed by the mother of defendant no.1 and 2." Thereby the plaintiff has pleaded with regard to encashment of cheque dt.12.11.2010 in the initial plaint itself and as per agreement of sale marked as EX.A1 which was also filed along with the plaint there is a reference in page No.2 of the agreement as the vendee has agreed to purchase the same and paid an advance amount of Rs. 12,00,000/-(Twelve lakhs) by way of cheque bearing No. 690492 dt. 25.11.2010 drawn on ING Vyshaya Bank Malkajgiri branch, R.R.District and balance amount of Rs. 3,00,000/- (Three lakhs) within 100 days from the date of this agreement and got register the sale deed.

18. Therefore the stand taken by the petitioner / D3 that in view of the subsequent filing of statement of account by plaintiff marked as Ex.A6 showing the bank transaction she was forced to file the present application is not supported by pleadings and record. With regard to stage of filing of present application it is argued by the learned counsel for respondent / plaintiff at the stage of further defendant evidence the present application is filed thereby it cannot be allowed has to be accepted particularly in the backdrop non pleading with regard to forgery of signature on agreement of sale dt. 24.1.2015; thereby this court find itself in disagreement with the arguments advanced by the learned counsel for petitioner / D3 that the



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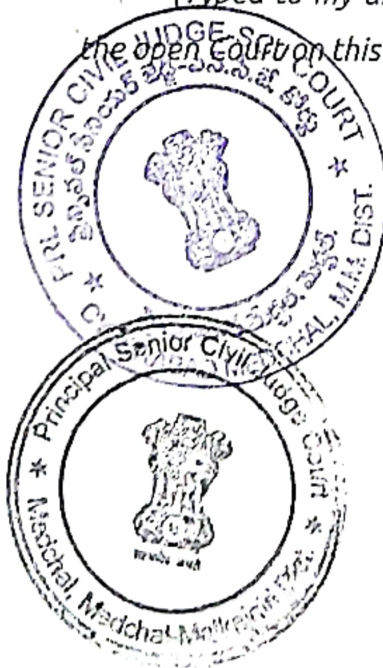
facts of the case has warranted the court to accept the prayer of the petitioner / D3 by directing expert opinion with regard to forgery of agreement of sale dt.24.1.2015. Therefore, the petition is devoid of merits accordingly dismissed without costs. Point is answered accordingly.

19. In the result, the **petition is dismissed without costs** with the following observations:

a) Since the suit was filed in the year 2015 and now coming up for defendant's further evidence, thereby the defendants are directed to complete entire further evidence within a month from today.

b) After completion of defendants further evidence both parties to the suit are further directed to submit arguments with out taking unnecessary adjournments.

(Typed to my dictation by Stenographer, Corrected and Pronounced by me in the open court on this the 22nd day of February, 2024)



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Principal Senior Civil Judge,
At MEDCHAL, MEDCHAL-MALKAJGIRI DISTRICT.

APPENDIX OF EVIDENCE
WITNESS EXAMINED

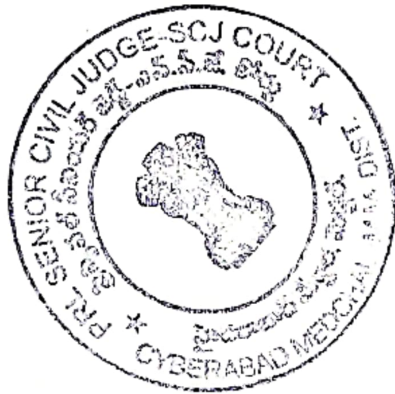
-NIL-

EXHIBITS MARKED

-Nil-

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Principal Senior Civil Judge,
At MEDCHAL, MEDCHAL-MALKAJGIRI DISTRICT.
Medchal-Malkajgiri District, at Medchal



COURT OF THE PRI. SENIOR CIVIL JUDGE Medchal, M.M. Dist.	
C.A. No.	1263
Application	26/2/24
Charges	5/3/24
Charge	6/3/24
Receipt	1042
Copy	78/-
Copy	6/3/24
Copy	6/3/24
Suprintendent Pri. Sr. Civil Judge Court Medchal, M.M. Dist.	

READY BY:
COMPARED BY:

Certified To be Photo True Copy

Pri. Sr. Superintendent
SCJ COURT
MEDCHAL, M.M. DIST

6/3/2024

6/3/2024