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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 384/2014

SUKHDATA CHITS PVT LTD & ORS Petitioners
Through : Mr.Ankit Jain, Advocate.
versus

SH RAJENDER PRASAD GUPTA Respondent
Through : Mr.Rajiv Kanwar, Advocate.

AND

+ CM(M) 383/2014

SH PREM KUMAR ARYA Petitioner
Through : Mr.Ankit Jain, Advocate.
versus

SH RAJENDER PRASAD GUPTA Respondent
Through : Mr.Rajiv Kanwar, Advocate.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
% **25.08.2015**

CM(M) No.383/2014
CM(M) No.384/2014

1. The petitioners (defendants in Civil Suits No.54/2014 and 115/2014) have filed these two petitions under Article 227 of Constitution of India impugning with the following prayers:-

(i) To set aside the order dated 24.01.2014 passed in CS No.115/2014 and order dated 18.01.2014 passed in CS No.54/2014.

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(ii) To set aside the identical order both dated 22.03.2014 passed in CS No.115/2014 and CS No.54/2014.

(iii) To permit the petitioners to drop Sh.Syed Sarfraz Ahmed as a witness in the civil suits and to produce another handwriting expert in his place.

2. Learned counsel for the petitioners has submitted that the petitioners examined the handwriting expert to prove handwriting on the cheques as the same was in different handwriting. The details of the cheques have been filled by the respondent herein. Sh.Syed Sarfraz Ahmed, the handwriting expert was examined as DW-5 but perusal of his cross examination revealed that he was not a qualified handwriting finger print expert and doubts have arisen about his qualification to depose as an expert in the matter. The petitioners had filed their report and also an affidavit under bonafide belief that Sh.Syed Sarfraz Ahmad was an expert in the matter and possessed requisite qualification in that regard. However, only during his cross examination it was revealed that he was not a qualified handwriting expert. Thus, the petitioners wanted to avail the services of another handwriting expert but the learned Trial Court vide impugned orders not only declined the request of the petitioners to examine another handwriting expert in place of Sh.Syed Sarfraz Ahmad but even the defence evidence was also closed recording that no DW was present. Further applications seeking review of the said orders have also been dismissed by the learned Trial Court.

3. Learned counsel for the petitioners has submitted that grave injustice has been caused to the petitioners for no fault of their own as the petitioners did not know about the qualification of the handwriting expert produced as DW-5. It has been further submitted that for failure of the handwriting expert not to appear for further cross examination, the petitioners cannot be

blamed, hence the impugned orders may be set aside and the petitioners may be permitted to produce another handwriting expert in place of DW-5 Sh.Syed Sarfraz Ahmad.

4. In the instant case, the handwriting expert has been engaged by the petitioners of their own and before availing his services, it was for the petitioners to satisfy themselves about the qualification and expertise of the handwriting expert. For completion of cross examination of the handwriting expert, the petitioners were required to take necessary steps by depositing the diet money and other expenses and get him summoned. It is only on failure of the witness to appear despite service that the Court may take coercive action to secure the presence of the witness.

5. In the impugned orders dated 24.01.2014 there is an observation by the Court that on several occasions this witness has not been brought to the witness box for further cross examination, commenting adversely on the conduct of the witness observing that such conduct of the witness was uncalled for in the background that the witness was brought by the petitioners/defendants before the Court.

6. In fact what the petitioners want at this stage is replacement of the handwriting expert, re-examination of the documents and then examining such handwriting expert as witness. The learned Trial Court has declined this prayer noting that no party can be allowed to retract in this manner.

7. The applications seeking review has already been dismissed as there was no error apparent on the face of record.

8. Proceeding under Article 227 of The Constitution of India is an extraordinary discretionary constitutional remedy to advance justice and not to thwart it. In the case *Jai Singh & Ors.. vs. Municipal Corporation of*

Delhi & Anr. 2011 (1) RCJ 343 (SC), the Apex Court has considered the scope of power of High Court under Article 227 of The Constitution of India. The relevant paragraph of the report is extracted as under :

'25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of *The Estralla Rubber v. Dass Estate (P) Ltd.*, 2001 8 SCC 97, wherein it was observed as follows :

"The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limited of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to".

9. When the prayer of the petitioners is examined in the light of above, I find that the learned Trial Court has not committed any error of law by declining the prayer of the petitioners to replace the handwriting expert who was under cross examination on the date when DE was closed. At the most

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the petitioners could have requested the learned Trial Court to provide one more opportunity to complete the statement of DW-5 – the handwriting expert. It appears that petitioners are not interested in doing so.

10. Finding no illegality or infirmity in the impugned orders, both the petitions are dismissed.

11. No costs.

CM No.7047/2014 in CM(M) No.383/2014

CM No.7049/2014 in CM(M) No.384/2014

Dismissed as infructuous.


PRATIBHA RANI, J.

AUGUST 25, 2015/'st'