6

$~30 & 31

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

\+ CM(M) 316/2015

RANJANA KHURANA & ANR ..... Petitioners
Through: Mr.Rakesh Sharma, Mr.Ajay Kaushik & Ms.Aakanksha Kaushik, Advocates

versus

DEVENDER DASS ..... Respondent
Through: Mr.Mukul Sharma, Advocate

AND

\+ CM(M) 317/2015

RANJANA KHURANA & ANR ..... Petitioners
Through: Mr.Rakesh Sharma, Mr.Ajay Kaushik & Ms.Aakanksha Kaushik, Advocates

versus

DEVENDER DASS ..... Respondent
Through: Mr.Mukul Sharma, Advocate

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% 19.08.2015

CM(M) Nos. 316/2015 & 317/2015

1. The petitioners are aggrieved by the order dated 16th September, 2014 whereby the application filed by the petitioners under Order XVI Rule 3 CPC for summoning the witness from Greater Noida Authority with relevant

Signature Not Verified
Digitally Signed
By:AMULYA

record has been rejected. By the same order another application filed by the petitioners under Section 45 of the Indian Evidence Act seeking permission of the Court to obtain handwriting expert opinion in respect of the documents Ex.PW1/DX, DY and DZ was not acceded to observing that since the plaintiff evidence have been closed, though plaintiff is at liberty to obtain expert handwriting opinion at his cost and expense, this order would not have the effect of granting permission to examine the handwriting expert.

2. Learned counsel for the petitioners has submitted that since the documents were confronted to the petitioners during their cross-examination and not filed at the appropriate stage, the necessity has arisen to summon the record and examine the handwriting expert. On being questioned as to whether after the documents were confronted to the petitioner No.2 during his cross-examination whether any such prayer was made by the petitioner to summon the record or examine the handwriting expert.

3. Learned counsel for the petitioners fairly conceded that till the plaintiffs evidence was closed no such request was made before the learned Trial Court.

4. On behalf of the respondent, Mr. Mukul Sharma, Advocate has submitted that the documents Ex.PW1/DX, DY and DZ were confronted to PW-1, Sh.Pradeep Khurana (petitioner No.2 herein) during his cross-examination and PW-1, Sh.Pradeep Khurana (petitioner No.2 herein) has admitted his signature thereon. Learned counsel for the respondent further submitted that when signatures on above documents have been admitted by PW-1, Sh.Pradeep Khurana, at the most handwriting expert can give opinion that author of script is other than the person who signed the same. In that

case even if such request is allowed it is not going to serve any purpose in the absence of any evidence by the petitioners explaining the circumstances under which petitioner No.2 signed those documents. It has been further submitted by the learned counsel for the respondent that since the trial has already been concluded and case is at the stage of final arguments, the applications filed by the petitioners to lead additional evidence and examination of hand-writing expert has been rightly dismissed by the learned Trial Court. Hence these petitions may be dismissed.

5. I have considered the rival contentions.

6. In these cases, the petitioners do not dispute that they have been given ample opportunities to lead their evidence. Record shows that after examination of PW-1, Sh.Pradeep Khurana on 17th April, 2013, Sh.Sanjay Sood, learned counsel for the plaintiffs made statement on 8th August, 2013 to the effect that he close plaintiffs' evidence. So it is not a case where the petitioners' evidence has been closed by the order of the Court. Thus there was sufficient time gap between the two dates i.e. when the document Ex. PW-1/DX, DY & DZ put to PW-1 during his cross-examination and he identified his signatures thereon at point A and the date when the plaintiffs evidence was closed. Thereafter the case was posted for defence evidence and till the Civil Suit No. 248/10 reached the stage of final arguments, no such application was filed.

7. Learned counsel for the petitioners submits that it is required in the interest of justice to give an opportunity to the petitioners to lead further evidence. Under provisions of Order VII Rule 14(4) CPC, during cross-examination the respondent was within his legal right to confront the plaintiffs witnesses with the documents. Thus, the petitioners cannot claim

that as these documents were not filed earlier by the respondent and on this ground they should be allowed to lead additional evidence. If it was felt necessary then it should have been done before closing plaintiffs evidence.

8. Since the impugned order does not suffer from any illegality or material irregularity, these petitions are hereby dismissed.

9. No costs.

CM No.6697/2015 in CM(M) 316/2015
CM No.6699/2015 in CM(M) 317/2015

Dismissed.

PRATIBHA RANI, J.

AUGUST 19, 2015
'pg'