

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2807 of 2016

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Budhedeo Shukla & Anr

.... Petitioner/s

Versus

Dharmendra Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar

For the Respondent/s : Mr. Rajesh Ranjan

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 16-02-2016 **1.** Heard the learned senior counsel, Mr. S. S. Dwivedi, on behalf of the petitioners and the learned senior counsel, Mr. K. N. Chaubey, on behalf of the plaintiff respondent No.1.

2. This application under Article 227 of the Constitution of India has been filed by the defendant petitioners for setting aside the order dated 07.01.2016 passed by Sub Judge IV, Danapur in Title Suit No.111 of 2010 whereby the Court below rejected the application filed by the petitioners for sending the documents to the Central Forensic Science Laboratory in the light of the letter received from the said CFSL dated 20th November, 2015.

3. It appears that the aforesaid title suit was filed by the plaintiff praying for the relief that the cancellation deed dated 28.01.2010 cancelling the power of attorney deed dated 02.09.2009 and 06.11.2009 is Farzi unconstitutional, fraudulent



and is not binding on the plaintiff. The plaintiff also prayed for declaration that the plaintiff has the right to register sale deeds on the basis of the general power of attorney executed by defendant No.1 in favour of plaintiff regarding Schedule II property and that agreement executed are all legal document and is binding on the defendant No.1.

4. The defendant petitioners appeared and filed contesting written statement alleging that because of the power of attorney, the plaintiff entered into various agreements and did not pay any consideration amount to the defendant which laid to the cancellation of the agreement. As such the defendants have already cancelled the power of attorney. A dispute arose regarding the payment of Rs.88 lakhs by the plaintiff to the defendant. The defendants admitted to have received Rs.7 lakhs. When the documents were executed in the Court below, the signature in the receipt showing payment of different amounts in lakhs to the defendant was denied by the defendant and, therefore, it was necessary for examination of expert regarding disputed signature. The Court below at the earliest allowed the parties to get their expert examined. The plaintiff examined the expert and has submitted the report. The petitioner herein filed applications earlier which was allowed but the Court below directed the



petitioner to get the report of the Central Forensic Science Laboratory personally and filed the same before the Court. Subsequently, the application filed by the petition was rejected on the ground that the petitioner did not take appropriate steps pursuant to the direction of the Court. The evidence of the parties were closed and the case was fixed for argument. At this stage, the petitioner filed application for sending the documents after marking the same as required by the letter of the Central Forensic Science Laboratory. The Court below considering the conduct of the petitioner has rejected the same and directed the petitioner to argue the case. The learned senior counsel Mr. S. S. Dwivedi submitted that the dispute is whether the plaintiff has paid Rs.88 lakhs to the petitioner or not. The petitioner has specifically denied the signature on the receipt of payment. Unless this disputed question as to whether the plaintiff made payment of Rs.88 lakhs is decided, the relief claimed by the plaintiff in the plaint, i.e., relief No.2 or 3 will not be given and that the petitioner will be debarred from claiming the said amount of Rs.88 lakhs. According to the learned senior counsel, since it was necessary for just decision of the controversy between the parties, the High Court allowed the application but while allowing the application in C.W.J.C. No.5675 of 2015 on 18.08.2015 directed to the Court



below to send the disputed documents to the laboratory/ authority as prayed for without delay at the cost of the petitioner. The payment of cost of Rs.10,000/- was made condition precedent. Subsequently, further the High Court directed that further opportunity shall be granted to the defendant No.1 and if he fails to produce expert opinion on the disputed receipt, the Court shall proceed in accordance with law for expeditious disposal of the suit. The learned senior counsel submitted that earlier pursuant to the direction of the Court below, the petitioner sent but it was returned to the Court.

5. The disputed signature sent for comparison to the Central Forensic Science Laboratory, Hyderabad. The CFSL Hyderabad returned the same by Annexure '5' saying that if the Court will send the same, the laboratory shall give the opinion and the matter was returned. Subsequently, again the Court send the original documents to the CFSL pursuant to the request of CFSL as contained in Annexure '5'. After receiving the said original document, the CFSL again wrote letter dated 20th November, 2015 to the Court below pointing some defects as there was no mention as to which are the disputed signature and the standard signatures. This letter was received in the Court of Sub Judge on 02.01.2016. Thereafter, the application was filed by the present petitioner for



sending the original after compliance of the requirement of the CFSL. The Court below has wrongly rejected the application although it was beyond the control of the petitioner, therefore, the Court below has exercised a jurisdiction in the manner not permitted by law and is in haste in deciding the suit without hearing even the argument of the petitioner. On these grounds, the learned senior counsel submitted that the impugned order is liable to be set aside.

6. On the other hand, the learned counsel Mr. K. N. Chaubey appearing on behalf of the respondent submitted that earlier the application filed by the plaintiff was rejected by the Court below in 2014 and, therefore, it will operate as res judicata because it is settled principle of law that principle of res judicata is applicable in the same suit in subsequent stages also. The learned senior counsel further submitted that the Court below has considered the conduct of the petitioner as he did not comply the order passed by the Court. He did not deposit the cost and that he did not go to the CFSL and did not mark the disputed signature and the admitted signature for comparison by CFSL. The Court below also held that the High Court has granted six weeks time in C.W.J.C. No.5675 of 2015 and, therefore, the Court below only followed the direction of the High Court as the High Court also

directed to dispose of the suit expeditiously. Since the Court below has only followed the direction of the High Court, it cannot be said that the order passed by the Court below is illegal or contrary to law or that it has occasioned failure of justice.

7. Perused the order passed by the Court below. It is admitted fact that the defendant petitioner is the owner of the suit property. It is also fact that power of attorney was executed in favour of the plaintiff. The plaintiff has filed the suit praying for declaration that the plaintiff has the right to execute sale deeds with respect to Schedule II property, i.e., the property belonging to the petitioner. Prayer has been made that the agreement entered into between the plaintiff with the purchaser is binding on the plaintiff. So far this relief is concerned, it can only be granted if it is found that the plaintiff has paid the consideration amount to the defendant petitioners pursuant to the agreement. The plaintiff entered into agreement for selling the property of the petitioner and now the relief is claimed that because he has already paid 95 lakhs, the agreements are binding on the plaintiffs to which defendants petitioners are denying strongly on the ground that all the signatures in the receipt filed by the plaintiff are forged signatures. Now, therefore for deciding the real controversies between the parties, this question regarding whether the signature



on the receipts are the signatures of the defendant petitioner No.1 or not is essential. So far this question is concerned since it requires scientific investigation, the petitioner filed the application. In January, 2015 letter was received from the CSFL to the effect that if the original documents are sent by the Court then only it can be examined. Then the Court sent the said originals but without specifying as to which one is admitted signature and which is the disputed signature to be compared and, therefore, letter was received again from the CSFL by Court wherein the authority requested the Court to identify the signatures which are questioned signatures and which are standard signatures. It is admitted fact that still today this has not been complied with. This letter was received on 2.1.2016 and by order dated 7.1.2016 the Court below has rejected the application and this order is under challenge in this writ application.

8. Order 26 Rule 10A of CPC reads as follows :-

10-A. Commission for scientific investigation – (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may b, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner

appointed under rule 9.

9. Therefore, in view of this provision, the discretion is of the Court. In the present case, it is necessary to investigate regarding the disputed signatures. So far the submission of the learned counsel for the respondent that it is the conduct of the petitioner which was considered by the Court below and then has rejected the same, it may be mentioned that if it is necessary for just decision of the controversies between the parties, on the ground of conduct of the petitioner, the duty which is cast on the Court itself cannot be refused. It is admitted fact that the documents are to be examined by CFSL, Ministry of Home Affairs, Govt. of India at Hyderabad where the parties have got no role to play. Moreover the documents are exhibited in the case and, therefore, the petitioner could not have gone to mark the signatures showing these signatures are disputed signatures or those signature are admitted the signatures. So far the submission of the learned senior counsel, Mr. Chaubey, that the High Court had fixed six weeks time is concerned, it may be mentioned here that if the High Court has fixed the time then in consideration of the facts of the case that the original document which was sent by the Court was not proper and there was no specification the High Court can extend the period also. So far the submission that the



High Court has directed the Court to expedite the disposal of the suit is concerned, it may be mentioned that the Hon'ble Supreme Court in the case of *Bachhaj Nahar Vs. Nilima Mandal & Ors* 2008 (17) SCC 491 at paragraph 10 and 11 has held that **'any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of CPC.'** Therefore, only on the ground of direction of the High Court, if it is necessary for just decision of the controversy between the parties, the prayer could not have been refused by the Court below, particularly when it is the jurisdiction of the Court and the Court is required to do justice between the parties who are the consumer of justice. From perusal of the order, nowhere it has been mentioned that the comparison of the disputed signature of the admitted signatures is not necessary in the present suit. It appears that the Court below only considering the conduct of the petitioner has rejected the application. In view of the discussion above as I have held that it is the controversy between the parties in connection with the grant of relief No.2 and 3 and, therefore unless it is decided to the satisfaction, the Court will not be in a position to do justice between the parties.

10. The Court below in the impugned order has observed that the case has been fixed for argument and, therefore, the



application at this stage cannot be entertained. It may be mentioned here that the Hon'ble Supreme Court in the case of ***K. Velusamy Vs. N. Palanisamy 2011 (11) SCC 275*** 2011 (11) SCC 275, has held that **'the Court in appropriate cases can exercise its discretion to permit reopening of evidence and / or recalling of witnesses for further examination / cross-examination after evidence laid by the parties is concluded and arguments have commenced or even when arguments have been concluded and case has been reserved for Judgment.'** Here from perusal of the letter of the CSFL as contained in Annexure '5' and Annexure '4' in the supplementary affidavit, it appears that the original documents as per requirement were not sent to the CSFL and still controversy remains the same , i.e., whether the signatures are the signatures of the petitioner or not. Since this is the main dispute between the parties regarding payment of not a small amount but Rs.88 lakhs and, therefore, as perfunctory manner, this cannot and should not be allowed to be by pass by the Court.

11. From the impugned order, it appears that the Court below has not even heard the petitioner and has posted the suit for Judgment tomorrow.

12. In view of the above facts and circumstances of the case, the impugned order is set aside. The application filed by the petitioner is hereby allowed. The Court below is directed to comply the letter issued by the Central Forensic Science Laboratory dated 20th November, 2015 which was received in the Court on 02.01.2016 and proceed according to law without giving unnecessary adjournments but on that count, justice should not be denied to any party.

13. Thus, this writ application is allowed. The impugned order is set aside. The Court below shall send the original documents after specifying as required by the letter of the CSFL and after obtaining the report shall grant opportunity to the petitioner for argument and then proceed.

(Mungeshwar Sahoo, J)

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