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

+ CM(M) 680/2016

RAM KISHOR JAIN & ANR Petitioners
Through Mr. Dinesh Monga, Advocate.
versus
GANGA DEVI Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 19.07.2016

CM No.25249/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 680/2016

1. By the present petition, the petitioner seeks to impugn the order dated 03.06.2016 of the trial court by which the application filed by the petitioner under Section 45 of the Evidence Act seeking opinion of an handwriting expert with regard to the alleged rent receipts filed by the respondent for proper, independent and fair investigation was dismissed.
2. The background facts as stated are that the respondent has filed a suit for ejectment and mesne profits stating that the petitioners are the tenants in the suit property since April 1971 at a monthly rent of Rs.5,500/-. Learned counsel appearing for the petitioners submits that the rent actually agreed upon by the parties was below Rs.3,500/- and that the petitioners are protected under the provisions of the Delhi Rent Control Act. He further

submits that the respondent has forged some rent receipts claiming that the petitioners have been paying rent of Rs.5,500/- p.m. to wriggle out the protection given to the petitioners under the Delhi Rent Control Act.

3. The trial court by the impugned order noted that the petitioner has already taken the opinion of a handwriting expert who in his Forensic Signatures Examination Report dated 01.02.2016 has given an opinion that the disputed signatures on the rent receipts dated 07.07.2014 and 11.03.2015 are forged and fabricated and not written by petitioner No.1. The court noted that the CFSL Laboratories of the country are already overburdened and the party contesting the suit has to stand on its own legs. The court relied upon the judgments in the case of **Gopal vs. Ambiga (2002) 2 MLJ 365** and **Saroja vs. Poora Mariyal (2002) 1 MLJ 153** where the practice of sending documents to forensic laboratories is depreciated.

4. Learned counsel for the petitioners has relied upon the judgment of the Supreme Court in the case of **Mrs. Kalyani Baskar vs. Mrs. M.S.Sampoornam in Crl. A. No. 1293/2006, 2007 ((93) DRJ 401** and the judgment of the Calcutta High Court in the case of **Jashoda Chowdhury & Ors. vs. Tarak Chowdhury & Ors., AIR 2016 Cal. 157** to contend that it was necessary for the Court to allow the application as it would help to get to the bottom of the matter.

5. The Supreme Court in the case of **Mrs. Kalyani Baskar vs. Mrs. M.S.Sampoornam (supra)** held as follows:-

“Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of

justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination.”

6. The said judgment relied upon by the petitioner would not be of any assistance to the petitioner.
7. Given the nature of the controversy, I see no infirmity in the impugned order. CFSL Laboratory would be inundated with such requests if in every civil suit where an allegation of forgery is made, the matter is referred to the said Laboratory for its opinion. Apart from giving the opinion, the handwriting expert of the Laboratory would also have to appear

in court for evidence which itself would be a time consuming affair for them. The request of the petitioner in the facts and circumstances cannot be said to be reasonable. It is for the parties to prove their case as per law.

8. There is no infirmity in the impugned order. The petition is dismissed.

JAYANT NATH, J

JULY 19, 2016

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