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

+ CM(M) 340/2017

RAJ KUMAR SHARMA & ANR Petitioners

Through: Mr.Nimesh Chib, Advocate.

versus

SHIV KUMAR SHARMA & ANR Respondents

Through: Mr.Rohit Sharma and Mr.Vinod

Gautam, Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **26.05.2017**

1. The petitioners have invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India feeling aggrieved by the order dated 12th July, 2017 whereby the learned Trial Court dismissed the application under Section 151 of Code of Civil Procedure read with Section 47 of Indian Evidence Act moved by the petitioners seeking permission to examine handwriting expert for examination of signature of defendant No.1/respondent No.1 Sh.Shiv Kumar Sharma (D1W1).

2. The reasons for declining the prayer are recorded in para 5 of the order impugned, which are extracted hereunder:-

'5. The defence evidence has been closed. It is alleged that during the cross examination of defendant as DW-1 he denied having signed the documents Ex.PW1/4 although he has admitted signing the sale deed Ex.D1W1/P1. Ex.PW1/4 is affidavit deed and Ex.D1W1/P1 is sale deed. During the cross examination recorded dated 04.09.2015 and 09.11.2015 of defendant No.1, when defendant was asked about the signature at point A of document sale deed Ex.D1W1/P1 he stated that he do not know whose signature is encircled at point 'A' at page 5

of document sale deed Ex.D1W1/P1. In the same way when he was asked about the signature at point 'Y' of Ex.Pw1/4 whether the signature at point 'Y' is his signature he said 'NO'. Nowhere in the cross examination dated 04.09.2015 and 09.11.2015 defendant has admitted his signature on document sale deed Ex.D1W1/P1. He has denied his signature on both the documents, therefore, same does not required to be tallied.'

3. During the course of hearing, learned counsel for the petitioners has been questioned on following aspects:-

- (i) Whether the document Ex.PW1/4 allegedly signed by the defendant No.1/respondent No.1 was admitted/denied by him in the written statement.
- (ii) If the document was not admitted or denied by the defendants in the written statement, whether at the stage of admission-denial, the document was put for admission-denial.
- (iii) Whether the handwriting expert was cited as a witness in the list of witnesses filed after settlement of issues.

4. Mr.Nimesh Chib, learned counsel for the petitioners has submitted that in the written statement, the defendants have cleverly not admitted affidavit Ex.PW1/4. This document also could not be put for admission-denial. It has been submitted that it was only during cross examination of D1W1 Sh.Shiv Kumar Sharma (defendant No.1/respondent No.1) he denied his signature on the affidavit Ex.PW1/4. Although he admitted having signed sale deed Ex.D1W1/P1 and that on perusal, affidavit Ex.PW1/4 and sale deed Ex.D1W1/P1 can be seen to have been signed by the same person.

5. In the case K.K.Velusamy vs. N.Palanisamy (2011) 11 SCC 275 the inherent powers vested in the Court under Section 151 of Code of Civil Procedure and the principles governing exercise of discretion under Section 151 of Code of Civil Procedure have been summarised by the Supreme

Court in paras 11 and 12 of the report as under:-

'11. There is no specific provision in the Code enabling the parties to re- open the evidence for the purpose of further examination-in-chief or cross- examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to re- open the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.

12. The respondent contended that section 151 cannot be used for re-opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of section 151 has been explained by this Court in several decisions (See : Padam Sen vs. State of UP-AIR 1961 SC 218; Manoharlal Chopra vs. Seth Hiralal - AIR 1962 SC 527; Arjun Singh vs. Mohindra Kumar - AIR 1964 SC 993; Ram Chand and Sons Sugar Mills (P) Ltd. vs. Kanhay Lal - AIR 1966 SC 1899; Nain Singh vs. Koonwarjee - 1970 (1) SCC 732; The Newabganj Sugar Mills Co.Ltd. vs. Union of India - AIR 1976 SC 1152; Jaipur Mineral Development Syndicate vs. Commissioner of Income Tax, New Delhi - AIR 1977 SC 1348; National Institute of Mental Health & Neuro Sciences vs. C Parameshwara - 2005 (2) SCC 256; and Vinod Seth vs. Devinder Bajaj - 2010 (8) SCC 1). We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a

necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent

power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.'

6. By examining the handwriting expert at the stage when the parties have already led their evidence, the petitioners/plaintiffs want to fill up the lacuna left in the case. The factum of the affidavit Ex.PW1/4 being not admitted by D1W1 (defendant No.1) was within the knowledge of the petitioners/plaintiffs since inception i.e. since the time of filing the written statement. Failure of the petitioners/plaintiffs to put the documents for admission-denial before settlement of issues and then not citing the handwriting expert as a witness and getting him examined at the stage of leading plaintiffs' evidence shows that the petitioners/plaintiffs did not want to examine the handwriting expert to prove the signature of defendant No.1 on affidavit Ex.PW1/4. The contention of the petitioners that only during cross examination of defendant No.1 that he denied the signatures leading to the necessity to examine the handwriting expert, is nothing but an afterthought and cannot be accepted. It cannot be made a ground to permit them to lead evidence by examining handwriting expert.

7. Finding no illegality or infirmity in the impugned order, the petition is dismissed.

PRATIBHA RANI, J.

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