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

+ CM(M) No.1060/2016 & CM No.39017/2016 (for stay).

SHASHI KANT DIXIT

..... Petitioner

Through: Mr. Nitesh Mehra and Ms. Hitaakshi
Mehra, Advs.

versus

RENUKA SHARMA AND ANR

..... Respondents

Through: Mr. Priyam Mehta and Mr. Udit
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.08.2017

1. This petition under Article 227 of the Constitution of India impugns the order (dated 12th August, 2016 in CS No.59/16 of the Court of Additional District Judge (Central) District, Tis Hazari Courts, Delhi) of dismissal of the application of the petitioner / defendant no.2 under Section 151 of the Code of Civil Procedure, 1908 (CPC) for permission to have the signatures of the respondent no.2 / defendant no.1 on the disputed documents as well as admitted signatures photographed and examined from an handwriting expert and to file the report of the handwriting expert and to examine the handwriting expert in evidence.

2. The counsel for the respondent no.1 / plaintiff has been appearing on advance notice.

3. Though the parties were referred to Mediation but without any success.

4. The suit from which this petition arises has been filed by the

respondent no.1 / plaintiff for specific performance of an Agreement of Sale of immovable property. The Agreement of Sale of the respondent no.1 / plaintiff is with the respondent no.2 / defendant no.1 and the petitioner / defendant no.2 is the subsequent purchaser from the respondent no.2 / defendant no.1.

5. The learned Additional District Judge, vide the impugned order, dismissed the application observing that there is already on record a report of the handwriting expert and the petitioner / defendant no.2 is only seeking appointment of another handwriting expert to undertake an exercise which had already been undertaken before the Court and that the Court has now to consider the evidence on record and the petitioner / defendant no.2 cannot re-agitate the issue of comparison of handwriting of the respondent no.2 / defendant no.1 which already stands “as evidence on record”.

6. The counsel for the petitioner / defendant no.2 has argued that the need for the petitioner / defendant no.2 to examine the handwriting expert arose only after the respondent no.2 / defendant no.1 when appearing in his evidence, denied his signatures on the Agreement to Sell of which specific performance is claimed by the respondent no.1 / plaintiff.

7. I have enquired from the counsel for the petitioner / defendant no.2, whether the respondent no.2 / defendant no.1 had at any earlier stage admitted his signatures on the Agreement to Sell.

8. The counsel for the petitioner / defendant no.2 states that the respondent no.2 / defendant no.1 in his written statement also had not admitted the Agreement to Sell of which specific performance was claimed.

9. On further enquiry, the counsel for the petitioner / defendant no.2

states that the petitioner / defendant no.2 also in his written statement has disputed the signatures of the respondent no.2 / defendant no.1 on the Agreement to Sell of which specific performance is claimed by the respondent no.1 / plaintiff.

10. That being the situation, the petitioner / defendant no.2 cannot be heard to say that the need to examine the handwriting expert arose only when the respondent no.2 / defendant no.1 in his evidence denied his signatures. From the statements/arguments of the counsel for the petitioner / defendant no.2, it is evident that the signatures of the respondent no.2 / defendant no.1 on the Agreement to Sell of which the respondent no.1 / plaintiff is claiming specific performance, have been in issue since the very beginning of the suit.

11. Not only so, the learned Additional District Judge, in the impugned order, has also recorded that the respondent no.1 / plaintiff had on 12th October, 2007 made an application under Section 151 of the CPC for the respondent no.2 / defendant no.1 to appear in Court and give specimen signatures in order to enable the respondent no.1 / plaintiff to have the necessary comparison of his signatures done and orders in this regard were passed and on 9th March, 2009 the respondent no.2 / defendant no.1 appeared before the Court and gave his specimen signatures. It is further recorded that subsequently on 19th August, 2009, report was filed by the handwriting expert opining that the specimen signatures of the respondent no.2 / defendant no.1 furnished in the Court matched with the signatures on the disputed documents and that the handwriting expert filed his affidavit by way of examination-in-chief on 24th August, 2009 and was cross-examined

by the defendants on 8th October, 2013.

12. The petitioner / defendant no.2, in the aforesaid facts, had sufficient notice and filing of the application at the stage of evidence of the petitioner / defendant no.2 is nothing but a dilatory tactic.

13. I may however observe that the learned Additional District Judge in the impugned order has proceeded on the premise that once a report of handwriting expert examined by one of the parties to the *lis* is on record, there is no need for allowing any other party to examine another handwriting expert. The said proposition is erroneous and under a misconception of the position of law. It is not as if the Court on its own had sought the opinion of an handwriting expert or the opinion of Central Forensic Science Laboratory (CFSL) or Forensic Science Laboratory (FSL) qua the handwriting was obtained. The handwriting expert examined by the respondent no.1 / plaintiff was essentially the witness of the respondent no.1 / plaintiff, though professing to be an expert. The opposite party, in rebuttal thereof, remains entitled to examine its own handwriting expert.

14. However the petitioner / defendant no.2 in the present case is found to have missed the bus for examining the handwriting expert and the suit, which is now informed to be at the stage of final arguments, cannot be permitted to be de-railed. On enquiry, it is informed that the suit is of 1999 vintage and has already remained pending for 18 years. As per the directions of the National Court Management Systems Committee of the Supreme Court and the State Court Management Systems Committee of this Court, the suits pending for more than 10 years have to be disposed of expeditiously and by giving undue indulgence to the petitioner / defendant

no.2, the said directions cannot be defeated.

15. The counsel for the petitioner / defendant no.2 has referred to ***Rehman Hussain Vs. Althaf Hussain*** AIR 2004 Kant 172 to contend that his right cannot be taken away.

16. There is no right in a party to a litigation, to take as much time as it desires for exercising its rights and the right is only at the appropriate stage of the suit and unless the Court is satisfied that the party was prevented from exercising the said right at the appropriate stage for reasons beyond its control, at a belated stage no such right can be claimed.

17. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 21, 2017

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