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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.816/2017 & CM No.27390/2017 (for stay).
PARMATMANAND SINGH Petitioner
Through: Mr. Pratyush Chirantan, Adv.
versus
USHA DEVI Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **02.08.2017**

CM No.27391/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) No.816/2017 & CM No.27390/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 3rd June, 2017 in CS No.476452/15 of the Court of Additional District Judge-01, (North-East), Karkardooma Courts, Delhi) of dismissal of the application of the petitioner / defendant under Section 151 of the Code of Civil Procedure, 1908 (CPC) for having the Promissory Note, forming the basis of the claim in the suit and on which the petitioner / defendant denies his signatures, examined from an handwriting expert.
4. The application was filed, after the respondent / plaintiff had closed her evidence and at the stage when the petitioner / defendant was being cross-examined by the counsel for the respondent / plaintiff.
5. The learned Additional District Judge in the impugned order has reasoned (i) that the issues in the suit were framed on 9th September, 2014 but the petitioner / defendant had till then not filed any list of witnesses; (ii) that the evidence of the respondent / plaintiff was closed on 9th July, 2016; (iii) that the application had been moved only to delay the proceedings; and, (iv) the petitioner / defendant was

well aware of his defence from the very beginning of the trial and if needed, should have taken steps earlier, for examination of the expert and should have filed his list of witnesses mentioning the name of the expert to be examined.

6. The argument of the counsel for the petitioner / defendant is that “only one more opportunity be given and the petitioner / defendant will close the evidence within one date only”.

7. On enquiry the counsel for the petitioner / defendant states that the suit is of the year 2012 and is now listed on 4th August, 2017 for final arguments.

8. The counsel for the petitioner / defendant, on being asked the issues in the suit, states that he has not placed the same but there is only one issue in the suit i.e. of the entitlement of the respondent / plaintiff to the suit amount.

9. A perusal of the written statement of the petitioner / defendant shows the petitioner / defendant to have therein itself denied the signatures on the Promissory Note and execution thereof.

10. It can be presumed that the respondent / plaintiff in her evidence must have led evidence in proof of the said document and the petitioner / defendant in his evidence would have led evidence in defence on the said aspect.

11. I have enquired from the counsel for the petitioner / defendant as to what purpose does the examination as a witness of handwriting expert serve in as much as in nearly all cases it is found that on either of the parties examining handwriting expert, the other party also examines another handwriting expert and both of which experts depose in favour of their respective clients and the question, whether the signatures are of the person claimed to be, falls for determination on the Court.

12. The counsel for the petitioner / defendant states that instead of his examining an handwriting expert, the disputed document along with admitted signatures can be sent to a Government laboratory.

13. Section 73 of the Indian Evidence Act, 1872 read with Section 45 entitles the Court to, if unable to determine whether the disputed signatures are or are not of the person of whom it is claimed, to seek such expert opinion as may be deemed fit. The petitioner / defendant before this Court has not placed the evidence led in the suit and in the absence whereof it cannot be found out, whether in the face of the evidence already led, there is any need for the opinion of an handwriting expert, even if of the Government laboratory.

14. Thus it is deemed expedient to dismiss this petition with the observation that if the Suit Court, at the stage of hearing arguments or writing judgment, is of the opinion that evidence on record is not sufficient to prove or disprove the signatures and comparison with naked eye of disputed and admitted signature also does not yield any result and it requires the opinion of an expert, to seek handwriting expert's opinion, whosoever the learned Additional District Judge deems fit.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

AUGUST 02, 2017

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