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

+ CM(M) No.947/2017 & CM No.31745/2017 (for stay).

D K GUPTA

..... Petitioner

Through: Mr. Sumit Bansal and Mr. Prateek
Kohli, Advs.

versus

URMILA TANWAR & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.09.2017

CM No.31746/2017 (for exemption).

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

CM(M) No.947/2017 & CM No.31745/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 2nd August, 2017 in Civil Suit No.8799/16 of the Court of Additional District Judge-04 (South), Saket Courts, New Delhi) of dismissal of the application of the petitioner / plaintiff under Order XXVI Rule 10A of the Code of Civil Procedure, 1908 (CPC) for having the documents containing the disputed and admitted signatures to be sent to Forensic Science Laboratory (FSL) for examination.

4. The suit from which this petition arises has been filed by the petitioner / plaintiff for specific performance of an Agreement of Sale of immovable property with the predecessor of the respondents / defendants. It is informed that the respondents / defendants have denied the signatures and thumb impression of their predecessor on the documents evidencing the

Agreement to Sell. However a perusal of the issues framed in the suit on 21st January, 2009 does not show a specific issue qua the said signatures and thumb impression to have been framed in the suit.

5. Be that as it may, it is the contention of the counsel for the petitioner / plaintiff that the petitioner / plaintiff, in the list of witnesses filed in the year 2009 itself, had mentioned a handwriting expert as well as a witness to bring before the Court the documents containing the admitted signatures of the predecessor of the respondents / defendants.

6. The learned Additional District Judge, vide the impugned order, has dismissed the application aforesaid observing (i) that since 21st January, 2009 when issues were framed in the suit, the suit was pending for evidence of the petitioner / plaintiff and the petitioner / plaintiff if desired to lead evidence of handwriting expert could lead evidence of a private handwriting expert; and, (ii) that the original documents containing the admitted signatures are also not on record.

7. The counsel for the petitioner / plaintiff has contended that the documents containing the admitted signatures are the Sale Deeds executed by the predecessor of the respondents / defendants with respect to other properties; that the record of the Sub Registrar with whom the said Sale Deeds were registered was summoned and the original Sale Deeds brought before the Court and certified copies thereof placed on record and exhibited during the evidence of the petitioner / plaintiff. It is thus contended that the need for making the application was that the original admitted signatures are not before the Court and only the handwriting expert from FSL can go to the

office of the Sub Registrar where originals of the said Sale Deeds are kept, to examine and photograph the same.

8. I am unable to accept the aforesaid contention. The petitioner / plaintiff can very well apply to the learned Additional District Judge for a direction to the Sub Registrar in whose custody and possession the original Sale Deeds are, to allow the handwriting expert of the petitioner / plaintiff to examine and photograph the same for the purposes of submitting a report.

9. Direction for examination of the disputed and admitted signatures by handwriting experts of FSL and Central Forensic Science Laboratory (CFSL) which are already strained for time for submitting reports in criminal prosecutions, cannot be issued in a routine manner. In the present case, when the petitioner / plaintiff since 2009 has intent to examine a private handwriting expert, there is no reason for the petitioner / plaintiff to after seven years change his mind. It is also not as if both the petitioner / plaintiff and respondents / defendants are agreeable to bind themselves to the report of the handwriting expert of the FSL / CFSL, in which case it can perhaps be said that a reference thereto under Section 20 of the Indian Evidence Act, 1872 can be made. Even if the petitioner / plaintiff were to agree to be bound by the said report, the respondents / defendants would be entitled to controvert the same and to produce their own handwriting expert; it is not deemed appropriate to trouble the FSL / CFSL in such circumstances.

10. I may in this regard also notice that even if the signatures on the documents evidencing the Agreement to Sell are reported to be of the predecessor of the respondents / defendants, there are number of other issues in the suit on which the entitlement of the petitioner / plaintiff to the relief would depend. Moreover, the Court at the stage of final arguments is to form an opinion qua the said signatures, not merely on the basis of the reports of the handwriting experts examined by the parties and by own ocular examination but also on basis of the other surrounding contemporaneous circumstances. It is thus felt that considering the nature of the suit and the aforesaid, this is not a fit case for troubling the handwriting experts of FSL and CFSL.

11. The counsel for the petitioner / plaintiff has then contended that a direction be issued by this Court for examining and photographing by the handwriting expert of the petitioner / plaintiff of the original signatures in the custody of the Sub Registrar.

12. It would not be appropriate for this Court to, in exercise of power under Article 227 of the Constitution of India, issue such a direction. It is always open to the petitioner / plaintiff to apply to the learned Additional District Judge in this regard.

13. Having regard to the fact that the suit is listed next for evidence of the petitioner / plaintiff on 21st and 26th September, 2017 with a direction to supply advance copy of the affidavits by way of examination-in-chief of the witnesses to be examined, at least one week prior to the date of hearing, the

petitioner / plaintiff may immediately make an application aforesaid before the learned Additional District Judge. The learned Additional District Judge is requested to consider the said application immediately on filing.

14. Else, no merit is found in the petition.

Dismissed.

No costs.

Dasti under signatures of Court master.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 01, 2017

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