

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16168 of 2012

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UTPAL KUMAR CHAKRABORTY Son Of Sri Amal Chandra Chakraborty
Resident Of Railway New Colony, Katihar, Police Station And District
Katihar

... .. Petitioner/s

Versus

SUBORNA DEVI Wife of Dhanik Lal Roy Resident of Mohalla Durgapur
Binodpur P.S. and District- Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Md. Qumrul Hoda
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 19.07.2019

The present writ petition has been filed for quashing the order dated 23.03.2012 passed by the learned S.D.J.M. (Evening Court), Katihar in Money Suit No. 9 of 2009, whereby and whereunder the application of the plaintiff-petitioner herein to send the signature made on the agreement in question to a handwriting expert for comparing the same with the admitted signature of the defendant-respondent herein, has been rejected.

The brief facts of the case are that the petitioner herein had filed a Money Suit bearing Money Suit No. 9 of 2009 for realisation of a sum of Rs. 50,000/- on the ground that the defendant-respondent herein had approached the plaintiff in the month of May, 2002 and had taken an advance of Rs. 50,000/- as a family loan, which was given by the petitioner



herein in presence of witnesses on 18.02.2002 and a deed of agreement was executed on a stamp paper. However, subsequently, the defendant-respondent herein had refused to pay the said money. The defendant-respondent herein had filed her written statement stating therein that the suit is hit by the provisions of the Bihar Money Lending Act, 1976, the allegations made in the plaint are false and concocted, hence denied and the defendant-respondent herein had never taken a sum of Rs. 50,000/- as loan from the petitioner herein. In the said written statement it was further stated that the deed of agreement is forged and fabricated. Further other averments have also been made in the written statement, which are not necessary to be stated herein, considering the scope of the present writ petition.

The petitioner herein is said to have filed a petition dated 24.08.2010/03.12.2011 in the aforesaid Money Suit *inter alia* praying therein to send the admitted signature of the respondent herein, made on her written statement on oath, along with the disputed signature of the defendant-respondent herein made on the agreement dated 18.05.2002, to a handwriting expert for examination and submitting his report.

It appears that the learned Sub-Divisional Judicial



Magistrate (Evening Court), Katihar had heard the aforesaid petition of the petitioner dated 24.08.2010 and by the impugned order dated 23.03.2012 had rejected the said petition being not maintainable at that stage since the same had been filed almost after a lapse of about one year of the case being fixed for argument on 18.01.2010.

The learned counsel for the petitioner submits that it is essential to seek opinion of a handwriting expert in order to lay bare the truth since the defendant-respondent herein has filed a written statement wherein she has denied having made any signature on the said agreement dated 18.05.2002.

I have heard the learned counsel for the petitioner and perused the materials on record. At this stage, it would be relevant to reproduce Sections 45, 47 and 73 of the Indian Evidence Act, 1872 herein below:-

“45. Opinions of experts

When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting ³⁰[or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, ³¹[or in questions as to identity of handwriting] ³⁰[or finger impressions] are relevant facts.

Such persons are called experts.

47. Opinion as to handwriting, when relevant



When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

73. Comparison of signature, writing or seal with others

admitted or proved

In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section also applies also, with any necessary modifications to finger-impressions.”

This Court finds that various methods are provided for under the Indian Evidence Act for proving the handwriting of a person, which are;

- (a) By an admission of a person who wrote;
- (b) By the evidence of some witness who saw it being written by that person;
- (c) By the evidence of a handwriting expert;



- (d) By the evidence of a witness acquainted with the handwriting of a person who is said to have written the disputed writing; and
- (e) Opinion affirmed by the Court itself on comparison made of the disputed writings with the admitted or specimen writings.

Both under Section 45 and Section 47 of the Indian Evidence Act, the evidence is an opinion, while in the former by a scientific comparison and in the later on the basis of familiarity resulting from frequent observation and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to itself compare the admitted or proved writings with the disputed one so as to verify the opinion of the experts. In any view of the matter, opinion of the handwriting expert is not conclusive and is subject to scrutiny by the Court and the Court is required to see for itself whether it can safely be held that the two writings are of the same person besides corroboration of the opinion of the handwriting expert by other evidences and subject to examination and cross-examination of the handwriting expert. It is a settled law that although there is no legal bar to a Judge using his own eyes to compare the disputed signature with the admitted signature, it is not advisable that a Judge should take upon himself the task of



comparing the admitted signature with the disputed one and the prudent course is to obtain the opinion and assistance of an expert.

It is equally a well settled law that the opinion of a handwriting expert can never take place of a substantive evidence, hence before acting on such an evidence, it is necessary to see if it stands corroborated, either by a clear direct evidence or by any circumstantial evidence.

Coming back to the present case, since the respondent herein has disputed her signature on the agreement dated 18.05.2002 and the petitioner herein has filed an application for sending the admitted and disputed signature to a handwriting expert for examination and submission of report, this Court feels that no prejudice will be caused to either of the parties, in case such recourse is resorted to. In fact despite valid service of notice, the respondent herein has not chosen to contest the present writ petition. Therefore, this Court finds that it would be in the interest of justice as also in conformity with the well settled principles of law to refer the disputed and admitted signatures of the defendant-respondent herein to a handwriting expert, seeking his opinion, which obviously shall be subject to scrutiny and corroboration, either by clear direct evidence or by



circumstantial evidence.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the present writ petition is allowed and the impugned order dated 23.03.2012 passed by the learned S.D.J.M. (Evening Court), Katihar in Money Suit No. 9 of 2009 is set aside.

The writ petition stands allowed, however, without any other as to costs.

(Mohit Kumar Shah, J)

S.Sb/-

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CAV DATE	
Uploading Date	19.07.2019
Transmission Date	

