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

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Judgment delivered on: 15.10.2019

+ C.R.P. 109/2019 & CM APPL. 21751/2019

RAEES AHHAD

..... Petitioner

versus

VIJENDER KUMAR

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner: Mr.S.C. Arora, Adv.

For the Respondent: Mr. Ratnesh Bansal, Advocate.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. Mr. Ratnesh Bansal, Advocate entered appearance on behalf of the respondent/Plaintiff.
2. Petitioner/Defendant impugns order dated 29.01.2019 whereby the application of the petitioner to lead rebuttal evidence has been rejected.
3. Subject suit was filed by the respondent for recovery of money. One of the questions arising before the trial court was with regard to the genuineness of receipt dated 28.03.2006 allegedly executed by the Petitioner. Said receipt was relied on by the respondent/plaintiff and signatures and thumb impressions on it have been denied by the petitioner/defendant.

4. An application under Section 73 was filed by the respondent/plaintiff for referring the said receipt for examination to Forensic Science Laboratory (FSL).

5. After the evidence of the defendant was concluded, the application was taken up for consideration and was allowed by order dated 26.09.2016. Thereafter the matter was adjourned from time to time for recording the testimony of the handwriting expert from the FSL. The handwriting expert was examined as PW5 on 21.08.2018.

6. By order dated 21.08.2018, petitioner/defendant was granted two weeks' time to move an application for summoning witness in rebuttal. On 21.08.2018, the case was adjourned for defendant's evidence in rebuttal for 22.09.2018.

7. On 31.08.2018, on an application filed by the petitioner, the trial court permitted the petitioner to examine the original records along with the handwriting expert and to take photographs which were taken on the same date. Report of the handwriting expert was filed on 22.09.2018 when the concerned court was on leave. Thereafter the matter was adjourned to 30.10.2018.

8. On 30.10.2018, request for adjournment was made on behalf of the petitioner on the ground that the counsel could not appear as he had met with an accident. The Court listed the case for final arguments for 29.01.2019.

9. Thereafter, subject application was filed by the petitioner on 21.01.2019 seeking to examine the handwriting expert. By the impugned

order 29.01.2019, the trial court has dismissed the application primarily on the ground that the report of the FSL is much authentic and no objection was ever filed by the defendant and further that the report of the private expert has no meaning as no document can be sent to private expert in supersession of the report of the FSL.

10. Clearly the view taken by the trial court is erroneous as expert opinion is only an additional piece of evidence and is not conclusive proof. Merely because the document has been sent to FSL does not imply that the Court is bound to accept the report of the FSL. The Court considers the report along with other documents which come on record.

11. As observed herein before, the trial court had itself listed the matter for rebuttal evidence after the expert from FSL was examined. The finding of the trial court that petitioner/defendant has not raised any objection to the FSL is also erroneous, in as much as, the handwriting expert is stated to have been cross-examined by the petitioner in detail on his report.

12. It may further be noticed that the report of the FSL as also the witness from the FSL was submitted before the Court after the defendant/petitioner evidence has already been concluded. Since the plaintiff/respondent was given an opportunity to introduce fresh evidence after the defendant evidence was already recorded, the trial court was obliged to grant an opportunity to the defendant to lead further evidence, inter-alia, evidence of the handwriting expert.

13. If fresh evidence is permitted to be brought on record by the Plaintiff after the evidence of the Defendant is recorded, the Court would be obliged

to permit the defendant to also lead fresh evidence.

14. Further, the reasoning given by the Trial Court that the report of the FSL is much authentic and the report of the private expert has no meaning as no document can be sent to private expert in supersession of the report of the FSL is also erroneous as the Trial Court cannot comment upon the evidence of the Petitioner/defendant prior to the same coming on record.

15. In view of the above, the impugned order dated 29.01.2019 is clearly unsustainable and is accordingly set aside.

16. The trial court is directed to give opportunity to the petitioner to lead rebuttal evidence, including leading the evidence of handwriting expert.

17. Trial court shall accordingly fix the case for recording of defendant's evidence including the evidence of the handwriting expert.

18. Petition is disposed of in the above terms.

19. Order *Dasti* under signatures of the Court Master.

**OCTOBER 15, 2019**

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**SANJEEV SACHDEVA, J**