

21 08.09.2021
AN Ct. No. 04

SA 274 of 2016
SAT 458 of 2015

I.A. No.: CAN 1 of 2015 (Old No.: CAN 9677 of 2015) (not found)

Jafar Sk.
vs.
Anaruddin Sk.

Mr. Prithu Dudhoria

... for appellant

Mr. Dudhoria, learned advocate appears on behalf of appellant, who was defendant in the suit for money. He submits, his client is aggrieved on the lower appellate Court having reversed the judgment of dismissal of suit, decreeing it. The suit was for price of goods sold and delivered. The goods were human hair. He submits, plaintiff relied upon credit notes allegedly issued by his client in the name of his shop 'Rinki Stores'. His client does not have a shop known as 'Rinki Stores' and he also denied the signatures appearing in the credit notes marked Exhibit 4. The lower appellate Court abdicated its duty under section 73, Evidence Act, 1872. He relies on judgment of Supreme Court in **Murari Lal vs. State of M.P.** reported in **(1980) 1 SCC 704**, paragraph 12. He submits, there is question involved in the appeal regarding appreciation of evidence on disputed hand writing.

We have perused the judgments. That appellant dealt with human hair in course of his business, stood proved by his own second witness D.W. 2. It appears from judgment of the trial Court, original bills were duly

exhibited and marked Exhibit 4, there being no record of objection. Documents duly tendered include proof of contents, though may not be conclusive (see **P.C Purushothama v. S. Perumal** reported in **AIR 1972 SC 608** para 19). None of the parties called for hand writing expert at trial.

No additional evidence was produced in the first appeal. The lower appellate Court adjudicating on a civil dispute said, inter alia, as follows:

“The Bills had been Marked Exhibits after they were proved to have been executed by the Defendant. Once they are proved to have been executed by the Defendant, whether there is ‘Rinki Stores’ or not does not matter at all because the Defendant may to avoid creditors, avoid the name to be placed before the shop room or avoid the name to be incorporated in the Tax Receipts of the Panchayet. The execution of those Bills had been proved by the Plaintiff by saying that they were written by the Plaintiff and the Plaintiff had given his initial in the Bills. Now, if the Defendant denies the same, the Onus is on the Defendant to prove by taking the help of Section 73 and 47 of the Evidence Act to disprove the same to be fabricated which the Defendant had not done because he knew that they were genuine. Civil Courts do not ask for proof beyond reasonable doubt but acts upon preponderance of probabilities. The Defendant has a shop room is proved from the said Tax Receipts of the Bharatpur Gram Panchayet being BRF No. 94 dated 31.03.2004, dated 31.03.2005 and dated 31.03.2007 but that there is no name there in those Tax Receipts, does not signify that the Defendant cannot issue a Bill in the name of ‘Rinki Stores’ and the person who wants to defraud his creditor will always do this what the Defendant has done and it is also not unnatural for a person to not name all the things which he sells from his shop. Therefore, writing of ‘Khelna’ (toys) in those Tax Receipts does not prove that he had no

business of selling hairs. On the contrary, the Defendant No. 2, Babul Sk., had said that he too is involved in the business of hair and sells hair to the Defendant.”

Supreme Court in **Murari Lal** (supra) said, argument that the Court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert, is entirely without force. Section 73 of Evidence Act expressly enables Court in that regard. In all cases bearing such disputes, it becomes plain duty of the Court to compare handwritings and come to its own conclusion. Where there is no expert opinion, the Court must discharge its plain duty with or without other evidence. In this case, the first appellate Court discharged its duty.

There is no substantial question of law involved in the appeal.

SA 274 of 2016 with I.A. No.: CAN 1 of 2015 (Old No.: CAN 9677 of 2015) (application not found), if pending, are dismissed.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)