

29.09.2022
Item No.7
Ct. No.7
CHC
(disposed of)

C.O.2278 of 2022

Sk. Nurel Hasan
Vs.
Mst. Momtaj Begum & ors.

Mr. Sk. Abu Abbas Uddin,
Ms. Nahid Rahman
...for the petitioner

Petitioner assails the order dated 19th July, 2022, rejecting the prayer for handwriting expert.

According to learned advocate for the petitioner, there was an *ex parte* decree granted by the court below in Title Suit No.263 of 1994, on 23rd March, 1999, upon forging the signature of the petitioner. After gathering knowledge of the *ex parte* decree, the petitioner filed Misc. Case under Order 9 Rule 13 C.P.C. registered as Misc. Case No.40 of 2016 to vacate the *ex parte* decree.

Mr. Abu Abbas Uddin, learned advocate appearing for the petitioner submits that *ex parte* decree was obtained upon forging the signature of the petitioner, and to unfold the controversy, the petitioner proposed for examination of handwriting expert upon furnishing admitted signature of the petitioner for verification with the signature found in the Vakalatnama, submitted in Title Suit No.263 of 1994. It was rejected by the court

below, by the order impugned subscribing reasons therefor.

Upon perusal of the impugned order, it appears that Title Suit No.263 of 1994 was ended in *ex parte* decree on 23rd March, 1999. The petitioner challenged the *ex parte* decree filing the referred Misc. Case in the year 2017. To the best of ability of petitioner, evidence was adduced for and on behalf of the petitioner, and further petitioner availed of the opportunity of making cross-examination of witnesses, examined by the opposite parties. It is after adducing the evidence of the petitioner, and further after availing of the opportunity of making cross-examination of the opposite parties/witnesses, the petitioner has come up with the instant petition, which could have been initiated much earlier, in particular immediately after filing the Misc. Case in the year 2017, as the moment when the petitioner challenged *ex parte* decree, the petitioner already disputed his signature, and therefore, such exercise is done with the purposive delay to cause in the disposal of Misc. Case.

For the reasons mentioned hereinabove, the impugned order does not call for any interference. However, petitioner has every right to dispute the signature of the petitioner at the time of advancing argument of the Misc. Case on the date, as already fixed for the purpose.

This would, however, not prevent the court below to apply judicial notice over the alleged signature appearing on the Vakalatnama, filed in Title Suit No.263 of 1994 with that of the available signature of the present petitioner found in the case record, after giving a total look to the evidence already adduced for the ends of justice.

Petitioner is directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocate in the court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)