

July 19, 2023
Sl. No.20
Court No.19
s.biswas

CO 547 of 2022
Sri Ranjit Kumar Singha
vs.
Smt. Malabika Ghosh

Mr. Partha Pratim Roy

... for the petitioner

The revisional application has been filed challenging two orders dated February 8, 2021 and March 8, 2021, passed in Title Suit No.306 of 2014.

By the order dated February 8, 2021, the learned court below dismissed the suit without any liberty to sue afresh on the one hand and allowed the defendant's application on the other. Although the meaningful reading of the entire order would indicate that the learned court wanted to reject the application filed by the defendant for comparison of the signature of the plaintiff in the vakalatnama with the signature of the plaintiff in an alleged deed of assignment, which was an unstamped document. The order passed by the learned court is recorded below:

“Ordered that the petition filed by the defendant on 22.01.2020 is allowed without costs.

The suit be and the same is dismissed on withdrawal without any liberty to sue afresh.”

The reasonings in the foregoing paragraphs of the order would indicate that in effect the learned court wanted to reject the application filed by the

defendant with the prayer for comparison of the signature on the vakalatnama and signature on a purported deed of assignment, which was shown to the plaintiff during cross-examination. The learned court found that under the garb of asking for a comparison of the signatures, the defendant was trying to introduce an unstamped document in the evidence which was not worthy of even being looked into at the stage of cross-examination.

However, as the ordering portion had gone down wrongly, which was a bona fide mistake and clerical error, the learned court in exercise of power under Section 152 of the Code of Civil Procedure, recalled the order and corrected the same, thereby, rejecting the application of the defendant and restoring the suit to its original position.

Mr. Roy, learned advocate appearing on behalf of the defendant/petitioner submits that the recalling of the dismissal was justified, but the dismissal of the defendant's application was not. The confusion in the mind of the learned court, was apparent from the order dated February 8, 2021 and the application filed by the defendant must be reconsidered.

Mr. Roy further prays that an opportunity be given to the defendant to proceed with his application for comparison of the signatures, by

tendering the documents to the PW1 at the stage of cross-examination, so that he could identify his signature.

Mr. Roy further prays that the document could be impounded, but the learned court could not have directed that the document could not be looked into.

Having considered the submission of Mr. Roy, this court is of the view that the learned court rightly held that the document which was unstamped and could not be introduced in the suit by raising a plea for comparison of signatures. The decision in **N. N. Global Mercantile Private Limited vs. Indo Unique Flame Limited & Ors.** reported in **(2023) SCC OnLine SC 495**, in paragraph 119 makes it clear that insufficiently stamped documents cannot be looked into and the same are void.

That apart, the alleged deed of assignment does not find any mention either in the written statement or in the list of documents relied upon by the defendant. The defendant could not satisfy the court either with regard to the stamping of same or about the execution of the same. For the first time, the deed of assignment was mentioned and sought to be introduced at the stage of cross-examination of the PW1 by asking the PW1 to identify the signature.

In the written statement, the specific defence case is that the landlord had taken Rs.9 lakhs from

the defendant and was supposed to execute a deed of assignment. Instead of doing so, the landlord filed a suit for eviction.

There does not appear to be any claim on the basis of the deed of assignment in the written statement. The written statement clearly indicates that the deed was supposed to be executed but was not. Hence, when there is no foundation of the existence of such deed in the written statement, comparison of the signature therein will not be permissible.

Hence, the revisional application is dismissed. The order impugned is not interfered with.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)