

S/L 27
23.06.2023
Court. No. 29
Swayan

CO 2392 of 2022

Shrimati Anita Bose
Vs.
Shrimati Dipti Dutta & Ors.

Mr. Sourav Sen
Mr. Tanmoy Sett
Mr. Pran Gopal Das
Mr. Shuvojeet Gupta
Ms. Adrishnata Chakraborty

...for the petitioners.

Mr. Koustav Chandra Das

...for the opposite parties.

1. Both the parties are represented by their respective learned Advocates.
2. The present revisional application as filed under Article 227 of the Constitution of India is now taken up for hearing.
3. Heard Mr. Sen, learned Advocate for the petitioner and Mr. Das, learned Advocate for the opposite parties at length in favour of and against the instant revisional application. The present case is now taken up for passing appropriate order.
4. In this revisional application the revisionist has challenged the order dated 28th June, 2022 as passed by Learned Civil Judge (Jr. Division), First Court at Alipore in Title Suit No. 555 of 1989 whereby and whereunder the learned Trial Court has been pleased to refuse to recall the order of compromise dated 26.05.1990 as passed in Title Suit No. 555 of 1989. The defendant No. 5 of the

said suit felt aggrieved and thus preferred the instant revisional application.

5. In support of the instant revisional application, Mr. Sen, learned Advocate for the revisionist/defendant No. 5 at the very outset draws attention of this Court to the petition as filed by his client under Section 151 of the Code of Civil Procedure before the learned Trial Court. It is contended by Mr. Sen that that in paragraph 5 of the said application under Section 151 of the Code of Civil Procedure the defendant No. 5/revisionist had raised following four contentions, namely, i) no summons was served upon the defendant No. 5; ii) she never appeared in Title Suit No. 555 of 1989; iii) she never signed any petition of compromise; iv) she did not sign any vokalatnama which was allegedly filed on her behalf in Title Suit No. 555 of 1989.
6. Drawing attention to the order dated 17.06.2016 as passed by the learned Trial Court in the aforesaid suit, it is contended on behalf of the defendant No. 5/revisionist that by the said order the present revisionist's application under Order 26 Rule 10A of the Code of Civil Procedure was allowed wherein the learned Trial Court pass the following order:

“Hence, it is

ORDERED

that the petition for appointment of handwriting expert is considered and allowed on contest. The defendant no. 5

is directed to file admitted document containing signature of herself that was executed by her on or before 03.04.1990 i.e. the date of the alleged compromise petition.”

7. Drawing further attention to the order dated 17.06.2016 it is contended that by the said order learned Trial Court in the said suit accepted three documents, namely, concession certificate of 1993, the OPD treatment claim form of 1999 and the deed of agreement of 1997 containing the signatures of the present revisionist as her earliest specimen signatures and thereafter sent those three documents containing the specimen signatures and the disputed vokalatnama containing alleged disputed signature of the defendant No. 5 to CFSL for obtaining report of the handwriting expert.
8. Drawing attention to the Exhibit 9 that is the forensic examination report, it is contended by Mr. Sen, learned Advocate for the revisionist from the report it would reveal that CFSL clearly indicates that the alleged signature of the present revisionist as available in the vokalatnama does not mach with the specimen signatures as have been sent to CFSL and learned Trial Court while passing the impugned order for the reason best known to him did not place his reliance upon such scientific report and on the contrary came to a conclusion

that the defendant No. 5 has miserably failed to discharge the rigor of proof of fraud by producing cogent evidence, either oral or documentary. It is further submitted by Mr. Sen, learned Advocate for the revisionist/defendant No. 5 that learned Trial Court has also miserably failed to visualise that the compromise petition containing the alleged signature of the defendant No. 5 was missing from the record over which the present defendant No. 5 has got no control.

9. Mr. Sen, thus, submits that the reason as assigned by learned Trial Court while passing the impugned order is not in accordance with law for which intervention of this Court is required under Article 227 of the Constitution of India. Mr. Sen, thus, submits that it is a fit case for allowing the instant revisional application by setting aside the impugned order.
10. *Per contra*, Mr. Das, learned Advocate for the opposite parties submits before this Court that the signatures which had been sent by the learned Trial Court as specimen signatures of the defendant No. 5 were not contemporaneous signatures of the defendant No. 5 and, therefore, learned Trial Court is very much justified in ignoring Exhibit 9, that is, the report of CFSL. It is further submitted by Mr. Das that learned Trial Court is very much justified in holding that the present revisionist/defendant No. 5 has failed to

discharge her onus of proving the alleged fraud since the present revisionist has not adduced sufficient evidence, either oral or documentary to prove the alleged factum of fraud as pleaded by her in her petition under Section 151 of the Code of Civil Procedure. It is further submitted by Mr. Das that the alleged unawareness of the present revisionist with regard to the passing of compromise decree is also not sustainable in the eye of law in view of the fact that after passing the compromise decree the suit property has been mutated in the assessment register of the Kolkata Municipal Corporation which is a public document. Mr. Das submits before this Court that there cannot be any justification on the part of this Court to interfere with the impugned order.

11. I have meticulously perused the entire materials as placed before this Court on behalf of the contending parties. I have also gone through the Trial Court record as well as the exhibited documents since those have been called for by me for effective disposal of the instant revisional application. I have given due consideration over the submissions of the learned Advocate for the revisionist and the opposite parties.
12. It is undisputed that in the said suit the learned Trial Court by an order dated 11.03.2016 allowed the present revisionist's application under Order 26 Rule 10A of the Code of Civil Procedure for

appointment of handwriting expert and in the said order a direction was passed upon the present revisionist/defendant No. 5 to file admitted document containing her signatures executed by her prior to 03.04.1990 for sending the same to CFSL along with the vokalatnama containing the alleged signature of the present revisionist/defendant No. 5. As discussed earlier by a subsequent order dated 17.06.2016 learned Trial Court modified the earlier order dated 11.03.2016 to some extent and accepted concession certificate of 1993, the OPD treatment claim form of 1999 and the deed of agreement of 1997 containing the signature of the present revisionist as specimen documents for sending the same for comparison to CFSL with the vokalatnama containing the alleged signature of the defendant No. 5. Admittedly the order dated 17.06.2016 has not been challenged before any higher forum and, therefore, the said order reached its finality and the same is, thus, not open to challenge before this Court now.

13. On perusal of the certified copy of impugned order, it reveals to this Court that learned Trial Court though mentioned in the said order about the Exhibit 9 (collectively) that is the CSFL report but he has not assigned any reason whatsoever for not placing his reliance upon such report. On the contrary learned Trial Court came to a finding that

the original compromise petition was not available in the case record and that the present revisionist/defendant No. 5 has failed to produce any evidence to prove fraud as claimed to have been exercised upon her by the opposite parties.

14. In considered view of this Court, the view taken by the learned Trial Court is not at all correct in view of the fact the learned Trial Court has miserably failed to consider that the original compromise petition is not available in the case record over which the present revisionist has got no control. Learned Trial Court has also failed to consider that the present revisionist/defendant No. 5 has made her best possible endeavor to adduce best possible evidence to substantiate her contention that she never appeared in the said suit by filing any vokalatnama which gets due support from the Exhibit 9 that is the report of the CFSL which clearly suggest that the alleged signature of the present defendant No. 5/revisionist is not the signature of the said defendant No. 5/revisionist.
15. In view such, natural conclusion arises that in the event the present defendant No. 5/revisionist did not make her appearance before the learned Trial Court in Title Suit No. 555 of 1989, therefore, question of signing compromise petition cannot also arise and even if for the shake or argument, it is presumed that she has signed on the compromise petition, learned Trial Court ought not

have accepted such compromise petition without properly executed vokalatnama since it is nobodies case that the present defendant No. 5/revisionist appeared in the said suit in person.

16. In view of the discussion made hereinabove, this Court considers that the learned Trial Court committed serious error of law in not considering a scientific evidence in its time perspective and, therefore, this Court considers that it is a fit case for allowing the instant revisional application.
17. Accordingly, the instant revisional application is hereby allowed on contest. As a result, the impugned order/judgment dated June 28, 2022 as passed by the learned Civil Judge (Junior Division), First Court at Alipore is hereby set aside.
18. Consequently the petition under Section 151 of the Code of Civil Procedure for recalling the compromise decree as passed in Title Suit No. 555 of 1989 vide order dated 26.05.1990 is hereby allowed. Consequently, the compromise decree dated 26.05.1990 is hereby set aside.
19. Learned Trial Court is, thus, directed to proceed with Title Suit No. 555 of 1989 from the stage prior to passing of the compromise decree holding that no compromise decree has been passed by the said Court. It is further directed that there is no further requirement of service of summons upon the defendant No. 5 of Title Suit No. 555 of 1989 since her learned Advocates are present before this

Court. Accordingly the defendant No. 5 of Title Suit No. 555 of 1989 is hereby directed to appear before the learned Trial Court by filing a vokalatnama positively within a month from the date of communication of this order. Learned Advocate for the plaintiffs in Title Suit No. 555 of 1989 before the learned Trial Court is to serve a copy of the plaint upon the defendant No. 5 in the meantime.

20. Department is directed to transmit the LCR along with all exhibited document to the concerned Court forthwith be special messenger at the cost of the present defendant No. 5/revisionist.
21. After passing of the aforesaid order, learned Advocate for the opposite parties prays for a stay of the operation of the order as passed by this Court herein above. Prayer for stay as made by the learned Advocate for the opposite parties is considered and refused.
22. Accordingly, the revisional application being CO 2392 of 2022 is disposed of.
23. Parties to act on the server copies of this order.
24. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)