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

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Judgment delivered on: 20.02.2023

+ CM(M) 264/2023

SANJEEV MALHOTRA

..... Petitioner

versus

MOLINA BATRA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Bhagat Singh, Advocate.

For the Respondent : Mr. T. S. Ahuja, Mr. Varun S. Ahuja
and Ms. Ridhi Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL.8179/2023 (Exemption)

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

CM(M) 264/2023 & CM APPL. 8180/2023 (Stay)

3. The petitioner challenges the order dated 13.10.2022 in CS No. 18561/16 titled "*S.S.L. Malhotra & Anr. Vs. Molina Batra*" whereby the learned Trial court has dismissed an application filed by the petitioner

seeking permission of the learned Court to summon the handwriting expert to lift the admitted and questioned signatures of the respondent on the agreement to sell and the other admitted documents already placed on record for forensic examination and report.

4. With the consent of the learned counsel appearing for the parties, the present petition is taken up for disposal today.

5. Mr. Singh, learned counsel appearing for the petitioner submits that the impugned order is perfunctory and there is no reason as to why the permission which was sought was rejected by the learned Trial Court.

6. Learned counsel draws attention of this Court to page 21 which is the agreement to sell, and particularly to the signatures purported to be that of the respondent, above the point where the word '*TRANSFEROR*' is mentioned. Learned counsel, in continuation of the aforesaid submissions, draws attention of this Court to page 22, particularly bottom portion of the said page where the admitted signatures of the respondent are stated to be appended.

7. Learned counsel submits that the signatures on this document *i.e.* registered General Power of Attorney, of the respondents, are admitted before the learned Trial Court.

8. Learned counsel also submits that the registered General Power of Attorney and the registered Will were executed on the same day, when the agreement to sell was stated to be executed.

9. Learned counsel also submits that in the cross examination, the respondent had particularly disputed her signatures which, in the submission of learned counsel for the petitioner, belongs to the

respondent. The respondent also stated in her cross examination that the signatures which appear on agreement to sell were forged. Learned counsel therefore, submits that to ascertain the truth, the prayer of the petition ought to be allowed.

10. Per contra, Mr. Ahuja, learned counsel appearing for the respondent No.1 submits that the learned Trial Court passed an order which was in accordance with law and there is no judicial impropriety or material irregularity committed due to which this Hon'ble Court needs to interfere in the impugned order.

11. Learned counsel points out to the reply filed by the respondent to the aforesaid application whereby the extract of the cross examination has been entered, to submit that the document which is purported to be an agreement to sell dated 29.08.2002, has to be tested on its own validity and veracity at the time of trial.

12. Learned counsel also submits that the document itself has been questioned by the respondent and the burden of proving the execution and the validity of the said document still lies on the petitioner.

13. Learned counsel submits that by virtue of the said application, the petitioner sought a method alien to law inasmuch as it appears to be an attempt to overcome the burden which was to be discharged by the petitioner. Learned counsel submits that the learned Trial Court has correctly observed that even if the signatures of the respondent are stated to be proved to be correct, the petitioner/plaintiff is yet to prove the document itself.

14. On that basis, learned counsel submits that there is no necessity of directing lifting of the said signatures to be sent to be examined by the

handwriting expert.

15. This Court has heard both the parties and perused the record before it.

16. It is apparent from the perusal of the order that it is a perfunctory order which does not show the reason behind the rejection of such request made by the plaintiff.

17. Learned Trial Court has simply gone into the aspect that the document is yet to be proved in accordance with law, and the issue whether the signatures are genuine or not, would be irrelevant at this stage.

18. This Court has also perused the reply filed by the respondent as well as the extract of the cross examination as brought out in the said application.

19. It is clear from the perusal of the same that the respondent has disputed the agreement to sell as well as the signatures appearing thereon. In fact, the respondent also disputes the signatures to the extent that the same are forged signatures.

20. It is undoubted that the burden of proving due execution of the purported agreement to sell dated 29.08.2022 and if the same is genuine or not lies on the petitioner, but keeping in view the fact that the signatures have not only been deemed but have also been alleged to be forged, the need for such examination may entail.

21. In that view of the matter, it is deemed appropriate to quash and set aside the impugned order dated 13.10.2022 and modify the same to the extent it rejects the application of the petitioner.

22. The learned Trial Court is directed to send the documents

whereon the admitted signatures of the respondent are appended, to be compared on those appended on the purported agreement to sell to the FSL for scientific evaluation of the signatures.

23. The FSL is directed to comply with the evaluation within a period not exceeding three months from the date of the order to be passed by the learned Trial Court in that regard.

24. It has been informed by learned counsel appearing for the respective parties that the suit pertains to the year 2007 as originally filed and request that the suitable directions may be passed for expeditious disposal.

25. In view of the aforesaid submissions, it is requested that the learned Trial Court may dispose of the aforesaid suit expeditiously.

26. It is also submitted that the plaintiff's evidence is already over and suit is pending for defendant's evidence.

27. It is requested that the learned Trial Court take up both the suits bearing No. CS No. 15506/16 "*Molina Batra Vs. SSL Malhotra*" and CS No. 18561/16 "*SSL Malhotra Vs. Molina Batra*" and dispose of the same in accordance with law as expeditiously as possible, however, within the next ten months.

28. In view of the aforesaid, the petition is disposed of with no order as to costs.

29. Learned Trial Court is directed to make available admitted documents, like registered GPA, Will, necessary subsequent pleadings and affidavit of evidence filed on behalf of respondent No.1 for FSL examination.

30. It is made clear that the petitioner shall file the evidence by way

of affidavit before the learned Trial Court well before the next date of hearing which is stated to be 13.03.2023.

31. This, however, shall be without prejudice to the outcome of the report to be received from the FSL.

TUSHAR RAO GEDELA, J.

FEBRUARY 20, 2023/ms

