

27.02.2024
Ct. No. 19
Sl. No.02
Cp

C.O. No. 347 of 2024

Smt. Sushila Devi Saraf
Vs.
Mr. Mukesh Kumar Barjatya @ Jain

Mr. Amrita Lal Dhar
Ms. Reema Coomar

.....for the petitioner.

Mr. Aritra Basu
Mr. S. Dasgupta
Mr. Binay Kr. Jain
Mr. Piyush Jain

....for the opposite party.

The revisional application arises out of an order dated December 18, 2023, passed by the learned Civil Judge (Junior Division), 1st Court, Sealdah in Ejectment Suit No. 03 of 2010.

By the order impugned, the learned court rejected an application under Order 26 Rule 10A of the Code of Civil Procedure. The petitioner filed an application after closure of evidence, praying for scientific investigation with regard to the signature of the petitioner in the Acknowledgement Due card (in short 'A/D card'), which was marked as Exhibit 8(b). The learned court rejected the said application on the ground that when the said signature was tendered in evidence by the P.W. – 1 and marked as Exhibit 8(b), there was no objection with regard to the said signature. The said objection was

taken at a belated stage only to delay the suit. The eviction suit is of 2010.

This Court perused the written statement in which there is an averment that notice of termination of tenancy had not been received by the petitioner. In the affidavit-in-chief filed by the son of the petitioner, as DW-1 and constituted attorney, it has been stated that the notice was not received. When the document was being marked as an exhibit, the signature of the petitioner was not denied by him. In the cross-examination of the PW-1, who had tendered the signature of the petitioner in evidence and had got it marked as an exhibit also, no question was put with regard to the said signature. There is no specific question or suggestion either in the cross-examination of the PW-1 or in the affidavit-in-chief of the DW-1 that the signature which was tendered by the plaintiff was not that of the petitioner.

In the affidavit-in-chief filed by the son of the petitioner, no averment has been made with regard to the fact that no A/D card had been signed by the petitioner. In the cross-examination, the son stated that the A/D card did not bear the signature of his mother who is the petitioner herein. The son is the constituted attorney.

Signature of the petitioner is within the petitioner's personal knowledge which was not before the court at any stage during the evidence. Thus, the question of scientific examination of the said signature at this stage, would not arise. First and foremost, the onus is on the plaintiff to prove that the notice was duly served. The learned court further observed that the petitioner did not pray for comparison of the signature with her admitted signature, which she ought to have done at the appropriate stage. Thus, is only a dilatory tactic.

The revisional application is accordingly disposed of without any interference. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)