

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O.980 of 2023

Ananta Kundu
Versus
Dilip Upadhyay

With

C.O.2770 of 2022

Dilip Upadhyay
Versus
Ananta Kundu

For the petitioner in C.O.980 of 2023
And
For the opposite party in C.O.2770 of 2022

: Sk. Md. Galib,
Mr. Swarvanu Saha,
Ms. Nandini Chatterjee

For the petitioner in C.O.2770 of 2022
and
For the opposite party in C.O.980 of 2023

: Mr. Rudraksha Chattopadhyay

Hearing concluded on: 04.03.2024
Judgment on: 19.03.2024

Shampa Sarkar, J.:-

In Re. CO 2770 of 2022

1. The revisional application being CO 2770 of 2022, is directed against an order dated July 26, 2022, passed by the learned Civil Judge (Junior Division), Additional Court, Krishnagar, Nadia, in Title Suit No.384 of 2017.

2. By the order impugned, the learned court rejected an application filed by the defendant under Section 45 of the Indian Evidence Act,

1872 (hereinafter referred to as the said Act), seeking identification of the signature/hand-writing of the defendant on the AD card by comparison with other admitted signatures of the defendant, by a handwriting expert. The application was filed on July 12, 2022.

3. The learned court rejected the said application on the ground that there was no need to refer the signature of the defendant to an expert for identification, as the court being an expert of all experts, could compare the admitted undisputed signatures of the defendant available in the record with the signature on the AD card.

4. The court held that a bare perusal of the handwriting of Dilip Upadhyay and comparison of the same with the admitted signatures appearing in the written statement, affidavit-in-chief, etc., would indicate that there was no discrepancy. The learned court relied on Section 73 of the said Act, in this regard. The petitioner is the defendant in the suit.

5. The application was filed by the petitioner with the contention that during cross-examination of the petitioner as DW1, a notice was shown to the petitioner, issued under Section 106 of the Transfer of Property Act, along with an acknowledgment due card. A question was put to the petitioner as to whether the said signature belonged to the petitioner or not. The petitioner denied his signature. Under such circumstances, when there was a denial of the signature, the court had no other alternative, but to send the admitted signature of the DW1 along with the AD card, to a handwriting expert, for a report.

6. The learned Advocate for the petitioner submitted that the Hon'ble Apex Court, in the matter of **Triruvengada Pillai vs. Navaneethammal & Anr.**, decided in **Civil No.290 of 2001** had held that although there was no legal bar for a judge to use his own eyes to compare the disputed writing with the admitted writing even without the aid of any handwriting expert, but when the sheet anchor of the prosecution case was based on the handwriting of the accused, a judge should hesitate to adjudicate the matter only based on comparison and findings made by him. It was not advisable for a judge to take upon himself the task of comparing the admitted writing with the disputed one, to find out whether the two agreed with each other. The prudent course would be to obtain an opinion or an assistance of an expert.

7. Learned Advocate further submitted that when there was a specific denial in the cross-examination with regard to the signature appearing in the AD card, the learned court had no other alternative, but to allow the application and send the AD card to a handwriting expert for comparison.

8. Mr. Galib, learned Advocate appearing for the opposite party/plaintiff submitted that the only intention of the defendant/petitioner was to delay the proceeding. At the stage of cross-examination, when the defendant/petitioner was confronted with the AD card, he denied his signature. The petitioner did not pay rent since January 2014. The petitioner assured that the dues would be paid within August 2014. No such payment was made.

9. A legal notice was sent to the petitioner on August 19, 2017 and on receipt of the notice, the petitioner approached the opposite party and assured that he would clear all dues and a new agreement would be prepared. In spite of receipt of the said notice, the petitioner did not take any steps either to clear-up the dues or to enter into a fresh tenancy agreement. He also failed to vacate the suit property. Thereafter, another notice under Section 106 of the Transfer of Property Act was served by registered post with acknowledgment due, dated September 25, 2017.

10. It was the specific averment in the plaint that the said notice was received on October 3, 2017. The notice along with AD card was filed in court, which was a part of the record. The petitioner was asked to quit and vacate and deliver up possession of the tenanted property within 15 days from the receipt of the said notice, but he did not deliver possession. The suit was filed. According to Mr. Galib, in the written statement filed by the petitioner, but there was no denial with regard to the service and receipt of the notice. He did not raise any dispute with regard to such averments. Mr. Galib relied on the provisions of Section 73 of the said Act.

11. Having considered the rival contentions of the parties, this court is required to assess whether the order impugned suffers from any irregularity or error of jurisdiction. The court was empowered by law to compare the admitted signatures of the petitioner/defendant with the signature appearing on the AD card. The record contained various signatures of the petitioner/defendant. The court did not harbour the

slightest doubt that the signature on the AD card was not that of the petitioner. In any event, opinion of a handwriting expert is also subject to corroboration. Even acceptance of such opinion, would depend on the court.

12. Only when it would be hazardous for the court to compare the signatures, the court could seek the opinion of an expert. Expert opinion could be obtained only to aid the court. When the court required such aid and assistance.

13. ***Triruvengada Pillai vs. Navaneethammal & Anr.***, decided in ***Civil No.290 of 2001***, cited by the petitioner, was rendered under separate set of facts and circumstances. The first defendant in the said suit that denied that she had put her thumb impression on Exhibit A1. She died during the pendency of the suit, before her turn to give evidence. The high court examined the document and recorded that the thumb impression was pale and not clear. Although the document was dated 1980, the same was executed on two stamp papers, which were purchased in 1973 and 1978. The scribe's evidence was unsatisfactory. As there was doubt with regard to the execution and the conduct, the high court recorded that the finding of the first appellate court without the benefit of an expert's opinion, merely on a casual perusal, was unsound. The Hon'ble Apex Court upheld the order of the High Court. The facts were completely different in the case referred to by the petitioner. Moreover, in situations where a prosecution case is based only on a signature which was disputed, the Hon'ble Apex Court held that, it would be proper for the court to seek the aid of an expert.

14. The present suit is for eviction of a tenant upon issuance of a notice to quit under Section 106 of the Transfer of Property Act. There was no specific denial with regard to the receipt of the notice by the tenant. In the written statement, no objection to the averments in the plaint with regard to service of the notice and receipt thereof, has been taken. In paragraph 7, there is an omnibus denial of the plaint case. The court did not deem it necessary to seek an opinion of an expert under such circumstances. No special aid was necessary, as there was no doubt in the mind of the court with regard to the signature. Section 45 and Section 73 of the said Act, are complementary to each other.

15. In ***Lalit Popli v. Canara Bank and Others*** reported in **[AIR 2003 SC 1796]** it was held by the Hon'ble Apex Court, that courts could compare the admitted writings with disputed writings and come to its own independent conclusion irrespective of the opinion of handwriting expert. Paragraph 13 of the aforesaid decision reads as follows:-

“It is to be noted that under S.45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under S.73 of the said Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are S.45, 47 and 73. Both under S.45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under S.73 of the Evidence Act. Ordinarily, S.45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated. It is for the Court to decide

whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the matter. [See Murari Lal v. State of Madhya Pradesh (1980 (1) SCC 704).”

16. In cases where there were supportive evidence pointing to the court's conclusions, it was well within the ambit of the power of the court to decide the case on the basis of the exercise undertaken by it.

17. In this case, the court held that there was no discrepancy between the signature of the petitioner in the admitted documents, namely, written statement, affidavit-in-chief and the signature on the AD card. This is not a case where the court had acted beyond jurisdiction.

18. Moreover, this is not a case of comparison of a seal or finger print, but only the signature of the petitioner which, according to the court did not require a complicated process and aid of an expert.

19. The court exercised power under Section 73 of the Evidence Act, 1872, by comparing the signature on the AD card with the admitted signatures and arrived at a conclusion.

20. In my opinion, the court assigned justiciable reasons to reject the said application filed by the petitioner. The court, which in seisin of the entire matter and has been observing the process and the demeanour of the petitioner during the deposition, was the best judge to decide whether in the facts and circumstances of the case and as per tenor of the cross-examination, a handwriting expert was required to be appointed at the fag end of the suit.

21. The court found that the sole purpose was only to kill time and drag the suit. A power has been vested on a court of law to consider and decide such issue and this court does not find any reason to hold a contrary view when the expert of all experts had concluded that bare perusal of the signature in the AD card and comparison of the same with the admitted signatures of the petitioner in all the documents on record, clearly indicated that the signature was of the same person. The Court formed an opinion and the suit will be decided in accordance with law on all the evidence available on record.

22. Hence, the revisional application is rejected.

23. The order impugned is upheld.

24. There shall be order as to costs.

25. Parties are to act on the basis of the sever copy of this order.

In Re. C.O. 980 of 2023

26. This is an application for expeditious disposal of Title Suit No.384 of 2017 which is pending before the learned Civil Judge (Junior Division), 1st Court, Krishnagar, Nadia.

27. The plaintiff/petitioner prayed for expeditious disposal of the said suit and submitted that unnecessary adjournments had been allowed by the learned court on various occasions, which had resulted in acute delay in disposal of the said suit.

28. It appears to the court that the suit was at the stage of cross-examination of DWs. An order of the learned court rejecting a prayer for appointment of handwriting expert was challenged before this court by

filing CO 2770 of 2022. The revisional application was pending since long. The suit was thus adjourned.

29. Now, with the dismissal of the revisional application, this court finds that there is no further impediment towards conclusion of the suit.

30. It is directed that the suit be disposed of preferably within six months from date, strictly in accordance with law.

31. The revisional application is disposed of.

32. This court has not entered into the merits of the pending suit. The learned court shall proceed independently.

33. There shall be no order as to costs.

34. All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)