

May 13, 2024
Sl. No.16
Court No.19
s.biswas

CO 2883 of 2023

Debabrata Dey
vs.
Smt. Subrata Simlai

Mr. Sounak Bhattacharya
Mr. Sounak Mandal
Mr. Anirban Saha Ray
Mr. Abhirup Haldar

... for the petitioner

Mr. Dibyendu Chatterjee
Mr. Pritam Majumdar
Ms. Satabdi Das
Mr. Ivan Roy

... for the opposite party

1. The revisional application arises out of an order dated April 4, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court at Alipore, district South 24 Parganas, in Money Suit No.342 of 2020.
2. By the order impugned, at the stage of evidence of PW1, the learned court allowed the application under Order 26 Rule 10A of the Code of Civil Procedure. The prayer for appointment of a hand-writing expert to compare the signature of the PW1/opposite party, on the declaration dated May 13, 2016, with the admitted signature of the opposite party was allowed.
3. The learned court was of the view that the copy of the declaration had not been served upon the opposite party. She was suddenly confronted with such document. Having realized later, that she had made a mistake in admitting her

signature in her cross-examination, she filed the application for appointment of a hand writing expert. The application for appointment of the hand-writing expert should be allowed as adequate opportunity was not available to the PW1/opposite party to contest the document properly, as she did not get a copy of the same.

4. Mr. Sounak Bhattacharya, learned advocate appearing on behalf of the petitioner submits that question no.14 in the cross-examination of PW1 indicates that the PW1 admitted that the signature on the declaration dated May 13, 2016 was her own. The signature was marked as 'A/1' with objection. The husband of the opposite party also admitted that PW1 was confronted with the documents and a copy was given to her. At the first instance, she admitted the signature. Soon, she realised that no such declaration had ever been executed by her. Thereafter, she filed an application for appointment of a hand-writing expert.
5. Mr. Chatterjee, learned advocate appearing on behalf of the opposite party submits that when the document was shown to the PW1 during her cross-examination, she was taken aback and unmindfully admitted her signature. Later, an enquiry was made and she realised that she had

not signed the document. Thus, prayer was made for appointment of a hand-writing expert.

6. Mr. Chatterjee further submits that the receipt copy signed by advocate Tapas Ray does not mention any date, thus it was not evident that the photocopy of the declaration was served before the same was marked as an exhibit. The specific contention of Mr. Chatterjee, is that in answer to question no.15, the PW1 had specifically stated that the money had not been received.
7. Considered the rival contentions of the parties. Although the receipt copy of the document which was handed over to the learned advocate does not mention a date, the PW2 has admitted in paragraph 17 of his affidavit-in-chief that during the cross-examination of PW1 the declaration dated May 13, 2016 was shown to the witness. A copy of the same was also served. Although, PW1 admitted her signature, she did not receive any money as mentioned therein. Upon realising that the signature on the declaration was not her own, but was forged, the application was filed for appointment of the hand writing expert.
8. Heard the parties. First and foremost, the evidence of PW1 does not contain any statement that the document was forged and manufactured. Her evidence was closed. She

admitted her signature during her cross-examination on July 20, 2022. The application for appointment of a hand-writing expert was filed in or around November/December, 2023. The deposition is already a part of the record. She has not retracted from such admission. Her signature has been marked Exhibit A/1.

9. However, I find from the deposition that PW1 although accepted her signature, she has in the same breath, stated that she had not received any money on the basis of any document. Such deposition is available in the cross-examination as answer to question no.15.
10. Further, PW2 in his affidavit-in-chief stated that the signature was forged, but no money had passed. Thus, both PW1 and PW2 have deposed that no money was received despite the declaration dated November 13, 2016.
11. Under such circumstances, the order impugned is set aside. Once there is an admission of the signature and the document had been marked as 'A/1', the question of appointment of a hand writing expert does not arise. The depositions of PW1 and PW2 clearly indicate that it was their specific case that no money had passed. It would be for the defendant to prove that the amount of Rs.14 lakhs had been transmitted to the account of PW1 or paid to the PW1 in the

usual/accepted modes of payment, by leading cogent evidence. If any report has been filed, upon examination of the signature, the same shall not be looked into. The parties will prove their case on the basis of the oral and documentary evidence.

12. The revisional application stands disposed of accordingly. The suit shall proceed from the stage of evidence of PW2.
13. 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.)