

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 4433 of 2019

Gayaram Singha

Vs.

Sandhya Maity & Ors.

For the petitioner :Mr. Sounak Bhattacharya, Adv.
Mr. Manish Kumar Das, Adv.

For the Opposite Party no. 1 :Ms. Sarmistha Ghosh Sarma, Adv.

Heard On :12.08.2024

Judgment On :20.08.2024

Bibhas Ranjan De, J. :

1. Challenge in this revision application is the order no. 99 dated 03.09.2019 in connection with Title Suit No. 235 of 2007 passed by Ld. Civil Judge, Junior Division, Kakdwip, South 24

Parganas wherein Ld. Judge allowed one application dated 18.11.2008 for opinion of hand writing expert regarding disputed signature on the receipt showing payment of Rs.25,000/- alleged to have been executed by the defendant in a purported agreement for sale of 46 ½ decimal of land in respect of plot nos. 2757, 6050, 2698, 2695, 2797, 2748 & 2758 under Khatian nos. 570, 305, 667 under Mouja Shivnagar Abad in favour of the petitioner.

Background:-

2. The whole course of action leading to the initiation of the entire proceeding can be briefly summarized to the effect that the plaintiff allegedly made an agreement with the defendant/opposite party no. 1. It has been further alleged that the petitioner at the time of need of the defendant/opposite party no. 1 herein gave an amount of Rs. 25,000/- by way of two installments, one being an amount of Rs. 12,000/- and another being an amount of Rs. 13, 000/-. In exchange the defendants/opposite party no. 1 was to execute a sale deed in favour of the petitioner in respect of the plots already mentioned.

- 3.** Petitioner further stated that the defendant/opposite party no. 1 as per agreement was supposed to execute that sale deed in favour of the petitioner on a certain date i.e. 30th day of Jaistha, 1414 B. S. but subsequently the defendant/opposite party no. 1 failed to keep her promise and did not execute the sale deed in accordance with the terms of the agreement. Therefore, the petitioner filed a title suit against the defendant/opposite party no. 1.
- 4.** During the pendency of the title suit, after a period of 11 years, the prayer of the defendant dated 18.11.2008 regarding an application for hand writing expert was taken up for hearing by the Ld. Trial Court on 03.09.2019 wherein the Ld. Trial Judge after hearing both parties was pleased to allow the application subject to cost of Rs. 2500/- to the plaintiff.
- 5.** Being aggrieved by and dissatisfied with the said order being no. 99 dated 03.09.2019 the petitioner has preferred this revision application with a prayer for setting aside of the order impugned on the following grounds:-

I. For that order passed by the Learned Court below is highly illegal, bad and cannot be allowed to sustain in law.

- II. *For that the Learned Court below miserably failed to apply his mind and without consulting with the records has allowed the application for hand writing expert at the evidence stage despite the fact there is opportunity for the defendants to verify the document.*
- III. *For that practically the handwriting expert application was allowed for the ends of justice to prove the suit a chance should be given to the defendant to establish the plea as it is principle of law and that the plaintiff will not be prejudiced without looking into the fact that the defendants have opportunity of cross examining the documents produce at the evidence stage.*
- IV. *For that the Learned Court below overlooked the records that at no point of time should the application for handwriting expert been allowed.*
- V. *For that the defendants did not take any step to dispose of the application for handwriting expert which was made in the year 2008, and after long lapse of 11 years the defendants have put up this application once again at the evidence stage only to delay the suit pending, but the total non-application of mind, the Learned Court below wrongly allowed this said application which is not sustainable in law.*
- VI. *For that the Learned Court has overlooked the same without properly scrutinizing the records of the Case the order of allowing the application for handwriting expert suffers from gross illegality and/or irregularity and a case of high handedness.*
- VII. *For that order passed by the Learned Court is bad, illegal and cannot be allowed to sustain in law.*

Argument advanced:-

6. Ld. Counsel, Mr. Sounak Bhattacharya, appearing on behalf of the petitioner has mainly contended that the initial prayer made by the defendant/ opposite party no.1 herein for hand writing expert was made in the year 2008 and after long lapse of 11 years the defendant have put up the application once again at the evidence stage only to delay the pending suit.
7. Mr. Bhattacharya has further contended that the impugned order is bad in law as the application for hand writing expert was allowed at the evidence stage despite the fact that there is opportunity for the defendant to verify the document.
8. Before parting with, Mr. Bhattacharya has submitted that there is every possibility for variation in the signature of the defendant/opposite party no. 1 as substantial amount has already elapsed.
9. Per contra, Ld. Counsel, Ms. Sarmistha Ghosh Sarma, appearing on behalf of the opposite party no. 1 has mainly canvassed her argument on the point that as admittedly the defendant/opposite party no. 1 herein has disputed her own signature on the receipt of payment in exchange of assurance

of execution of deed, there is no other alternative but to take assistance of an expert so that the dispute regarding signature is settled beyond any reasonable doubt.

Analysis:-

- 10.** On perusal of the impugned order it appears that defendant/opposite party no. 1 herein disputed her signature alleged to have been made on the receipts of payment totaling to Rs. 25,000/- on the assurance of execution of a sale deed in respect of subject property.
- 11.** Ld. Judge allowed the application dated 18.11.2008 seeking examination of the signature of the defendant/opposite party no. 1 herein by an hand writing expert.
- 12.** The provision of Section 73 of the Evidence Act, 1872 (for short Act, 1872) enables a Court to compare signature or writing or thumb impression in question with the one which is to be proved or admitted to be of the person concerned. It is provided under Section 45 of the Act, 1872 that when the Court has to form an opinion as to the identity of hand writing or signature or finger-impressions, the Court can obtain the opinion of an expert. For obtaining the opinion of an expert

certainly the disputed and the admitted document must be sent to him for the purpose of comparison.

13. In the case at hand, there is a dispute regarding signature on a receipt showing payment of Rs. 25,000/-. Defendant/opposite party no. 1 herein disputed her signature on the receipt of payment of Rs. 25,000/- by the plaintiff/petitioner herein.

14. In this circumstances, Ld. Judge did not take any risk of comparing the signature on the disputed receipt with any admitted signature of the defendant/opposite party no. 1 herein, invoking the provision of Section 73 of the Act, 1872. Ld. Judge rather exercised the power under Section 45 of the Act, 1872 seeking opinion of expert.

15. Given facts and circumstances, I find hardly any reason to interfere with the discretion exercised by the Ld. Judge in allowing the application for opinion of expert save and except some modifications which stand as follows:- Provided that there is no admitted signature available of the defendant/opposite party no. 1 herein, in that case the Court in accordance with Section 73 of the Act, 1872 is empowered to

direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person and Ld. Trial Judge should not hesitate to exercise such power for just adjudication.

16. Ld. Judge has to direct the defendant/opposite party no. 1 herein to produce any document with admitted signature of the defendant/opposite party no. 1 herein within a time specified by the Ld. Judge for onwards transmission of the same along with the disputed receipt provided that the cost of the entire examination shall be borne by the defendant/opposite party no. 1 herein.

17. In the light of the aforesaid discussion the instant civil revision application being no. 4433 of 2019 stands disposed of.

18. Interim order, if there be any, stands vacated.

19. Connected applications, if there be, also stands disposed of accordingly.

20. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]