IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 2nd OF FEBRUARY, 2024

MISC. PETITION No. 491 of 2024

BETWEEN:-

1. **NAINSINGH (DECEASED) THROUGH LRS. GOPALSINGH S/O NAINSINGH RAJPUT, AGED ABOUT 43 YEARS, OCCUPATION: BUSINESS NAPAKHEDA TEHSIL ALOT DISTRICT RATLAM (MADHYA PRADESH)**

2. **NAINSINGH (DECEASED) THROUGH LRS. PRATAPSINGH S/O NAINSINGH RAJPUT, AGED ABOUT 33 YEARS, OCCUPATION: BUSINESS NAPAKHEDA TEHSIL ALOT DISTRICT RATLAM (MADHYA PRADESH)**

3. **NAINSINGH (DECEASED) THROUGH LRS. KAILASHIBAI W/O RAMSINGH JI, AGED ABOUT 38 YEARS, OCCUPATION: HOUSEWORK NAPAKHEDA TEHSIL ALOT DISTRICT RATLAM (MADHYA PRADESH)**

4. **NAINSINGH (DECEASED) THROUGH LRS. ARJUNSINGH S/O NAINSINGH RAJPUT, AGED ABOUT 18 YEARS, OCCUPATION: BUSINESS NAPAKHEDA TEHSIL ALOT DISTRICT RATLAM (MADHYA PRADESH)**

5. **NAINSINGH (DECEASED) THROUGH LRS. LABUBAI D/O NAINSINGH RAJPUT, AGED ABOUT 43 YEARS, OCCUPATION: HOUSEWIFE NAPAKHEDA TEHSIL ALOT DISTRICT RATLAM (MADHYA PRADESH)**

6. **NAINSINGH (DECEASED) THROUGH LRS. RESHAMBAI D/O NAINSINGH RAJPUT, AGED ABOUT 43 YEARS, OCCUPATION: HOUSEWIFE NAPAKHEDA TEHSIL ALOT DISTRICT RATLAM (MADHYA PRADESH)**

7. **NAINSINGH (DECEASED) THROUGH LRS. ASABBAI W/O BHERUSINGH, AGED ABOUT 45 YEARS, OCCUPATION: HOUSEWIFE VILLAGE**

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SINDHLIA TEHSIL BAROD DIST AGAR (MADHYA PRADESH)

.....PETITIONER

(BY MS. ARCHANA MAHESHWARI, ADVOCATE)

AND

PRAKASHCHANDRA S/O SHRIKISHAN JI GOYAL, AGED ABOUT 60 YEARS, OCCUPATION: BUSINESS SHIVAM VASTRALAYA, RAJENDRA CHAUK ALOT DISTRICT RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(NONE FOR THE RESPONDENT)

This petition coming on for admission this day, the court passed the following:

ORDER

The petitioner has filed the present petition under Article 227 of the Constitution of India being aggrieved by the order dated 07.12.2023, whereby the application filed by the original defendant under Section 45 of the Indian Evidence Act, 1872 has been dismissed.

02. Draped in brevity, the relevant facts are that the plaintiff - Prakashchandra filed a suit against defendant - late Nain Singh for recovery of Rs.2,60,000/- along with interest. According to the plaintiff, he sold cloths to the defendant valued Rs.1,99,800/- on 11.05.2015 and issued a bill, which was singed by the defendant and aforesaid transaction was also recorded in the ledger maintained by the plaintiff. The aforesaid goods were sold on the credit basis but the defendant did not pay the amount to the plaintiff, hence, the cause of action accrued for filing of the suit.

03. The defendant filed a written statement denying the liability to pay the said amount. He filed an application under Section 45 of the Indian Evidence Act for sending the documents for verification of the signature as he is an

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illiterate person. The application filed on 07.09.2019 remained pending for three years. Meanwhile, the defendant expired, his legal heirs were brought on record and they applied for amendment in the written statement. The permission was granted and accordingly, written statement was amended. Now the application came up for consideration and the has been dismissed on the ground that after the death of defendant, sample of specimen signature cannot be obtained. Signatures of the defendant on affidavit and written statement are available and the Court has taken responsibility to compare the same and at present, there is no need for examination of the signature by the handwriting expert, hence, dismissed the application.

04. As on today, the stage for examination of signature has not come, under Section 45 of the Indian Evidence Act. The Court may examine that signature and after recording of evidence if it is found that the signature is liable to be examined, the Court *suo motu* may direct for examination of the signature by the handwriting expert. At this statge, I do not find any reason to interfere with the order passed by the Court below as the same neither suffers from any infirmity nor illegality.

05. In view of the above, Writ Petition stands dismissed.

(VIVEK RUSIA)
JUDGE

Ravi

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