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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5197 OF 2024

Amrutlal Udaramji Kumawat

.. Petitioner

Versus

Desaram Vardhaji Moda

.. Respondent

-
- Ms. Hemangi D. Pathare, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2024.

P.C.:

- 1.** Heard Ms. Pathare, learned Advocate for Petitioner.
- 2.** The order impugned in the present Writ Petition is dated 05.04.2021 and the Writ Petition has seen the light of the day today after a period of 3 years.
- 3.** Ms. Pathare, learned Advocate has argued the Writ Petition fully. It is seen that Application is filed by Defendant in a trial seeking appointment of a hand writing expert under the provisions of Section 45 of the Indian Evidence Act, 1872 (for short “**the said Act**”) in respect of an objection raised by the Defendant with respect to the signature of the Defendant appearing on Exhibit “63” nomenclatured as “Ekrarnama”. Copy of the said Ekrarnama is at page No.29 of the Writ Petition. It is contended by the Defendant that the said Ekrarnama

is not executed by the Defendant and the signature appearing thereon is fabricated. I have seen the document. It bears the name of the Defendant as his signature on the first page as also on the second page of the document. It is the Defendant's case that the said document has been prepared by the Plaintiff to the detriment and prejudice of the Defendant and the Defendant has not signed on the said document.

4. Ms. Pathare would contend that by virtue of the said document produced on record, the learned Trial Court has held that the said document below Exhibit "63" has been proved and hence is admitted in evidence and in that view of the matter, she would submit that the learned Trial Court has already premeditated its opinion on the said document. She would submit that rejection of Defendant's Application below Exhibit "118" is therefore incorrect and this Court should intervene and appoint a handwriting expert to verify the signature of the Defendant.

5. I have heard the learned Advocate for the Petitioner and perused the Application filed below Exhibit "118" as also the order dated 05.04.2021. It is seen that the learned Trial Court has exhibited and marked the document i.e. Ekrarnama which is at Exhibit "63". Document can be proved either by primary evidence or by the secondary evidence and if the original of the document is placed on record, then under the provisions of Sections 62 and 64 of the said Act,

the said document has to be exhibited as being proved by primary evidence. This is what has occurred in the present case. However exhibiting the original document would undoubtedly not prove the contents of the said document if they are objected to. In the present case dispute has been raised by the Defendant on the execution of the document by challenging the signature of the Defendant on the said document on both its pages. Defendant has filed Application below Exhibit “118” seeking appointment of a handwriting expert to verify these signatures. Though Application is resisted by the Plaintiff, the learned Trial Court has in its wisdom opined that under the provisions of Section 73 of the said Act, the Court itself has the power to compare the signatures, writing or seal with the others which are admitted or proved and form an opinion. On this ground, the Application of Defendant stands rejected.

6. The learned Trial Court has opined that the Court can compare the signatures of the Defendant's. The Court has also stated that the signature of the Defendant is available to the Court on the written statement filed by the Defendant and the same can also be compared with the signature appearing in the Ekrarnama i.e. document below Exhibit “63”. After forming this opinion and delineating such an order, the learned Trial Court has rejected the Application for appointment of handwriting expert on the ground of desirability. Perusal of the pleadings show that in an earlier

Application filed by the Plaintiff himself below Exhibit “66”, Defendant had taken a stand that the Court may compare the signatures on the said Ekrarnama and it would not be necessary to call for an opinion of the expert. Such stand taken by the Defendant is replicated in the order passed below Exhibit “66” which is appended at page No.64 of the Writ Petition.

7. Ms. Pathare would submit that by virtue of the said order, the learned Trial Court directed appointment of handwriting expert, however Plaintiff did not comply with the said order and the order lapsed. Hence she would submit that it is imperative that the Application filed below Exhibit “118” ought to have been allowed by the Trial Court. The name of the handwriting expert is also suggested by the Defendant.

8. The issue between the parties is whether the contentious document i.e. Ekrarnama dated 26.04.2005 is a forged and fabricated document and only contentious part is the signature of the Defendant appearing thereon. Pleadings show that the Defendant had filed his written statement as far back as in the year 2008 and had taken the objection that he had not signed the said Ekrarnama referred to and relied upon by the Plaintiff in the first instance itself in his written statement. In that view of the matter, the learned Trial Court did not consider the Defendant’s stand taken in the first instance while

considering the Application filed below Exhibit “118”.

9. It is precisely because of the Defendant’s stand taken in his written statement that the Plaintiff was compelled to file Application below Exhibit “66” in the year 2011 itself. However when the said Application was filed before the Trial Court, despite the Defendant resisting it, the Plaintiff did not comply with the order and allowed the order to lapse. The Plaintiff may be under a presumption that once the document i.e. Ekrarnama dated 26.04.2005 is marked as exhibit below Exhibit “63”, the said document stands proven in all respects. Though the wisdom of the learned Trial Court in contending that the Trial Court would employ the provisions of Section 73 of the said Act and attempt to compare the signatures of the Defendant on the Ekrarnama with his other signatures which are admitted and proved cannot be faulted, but in the present case the facts are such that the Application of the Defendant ought to have been considered affirmatively in order to leave no reason for doubt.

10. In view of the Defendant’s specific objection that he has not signed the Ekrarknama in his written statement taken in the first instance and which clearly finds mention in the Trial Court’s order dated 19.01.2011 passed below Exhibit “66”, I am of the clear opinion that the Application filed below Exhibit “118” ought to have therefore been allowed by the learned Trial Court in order to do complete justice

between the parties. There is no doubt that the learned Trial Court can also compare the signatures with its naked eye but still the *lis* in the present case is clearly dependent on the signatures on the document below Exhibit “63”. It is seen that the objection to the said signatures is not taken by the Defendant just now but it was taken in the first instance itself when the written statement was filed.

11. In that view of the matter, I am inclined to allow the Application below Exhibit “118” as filed by the Defendant. Resultantly, the order dated 05.04.2021 shall stand quashed and set aside.

12. Defendant shall immediately approach the handwriting expert and if there is any difficulty, shall approach the Trial Court for directions if the earlier suggested expert is not available. Document below Exhibit “63” shall be placed before the handwriting expert for comparing the signatures of the Defendant with those that are admitted and proved in public documents for comparison of the same. The learned Trial Court shall monitor the appointment of handwriting expert and direct him to file his report within a period of eight weeks from today before the learned Trial Court. Once the report is filed before the learned Trial Court, Trial Court is directed to proceed further with the Suit proceedings in accordance with law and determine the same.

13. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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