



WEB COPY



A.No.974, 975 and 976 of 2024
In

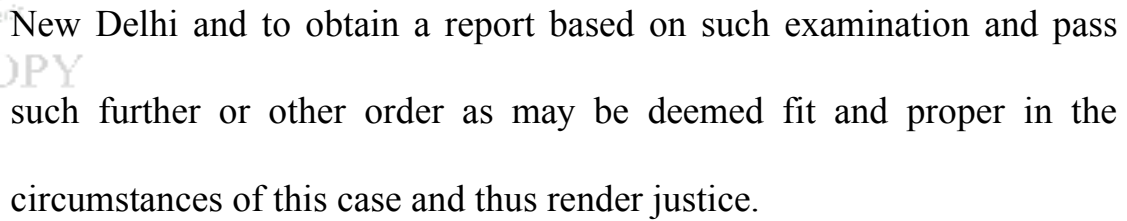
A.No 5583 of 2022
In
C.S No 536 of 1999

Reserved on: 18.03.2024

Delivered on: 28.03.2024

A.No 974 of 2024 has been filed to initiate contempt proceedings against the 1st Respondent for wilfully using false signatures in affidavit in A.No 5583 of 2022 in C.S No 536 of 1999 on the file of this Hon'ble Court and proper in the circumstances of the this case and thus render justice.

2.A.No 975 of 2024 has been filed to send the signatures of the deponent found in A.No 5583 of 2022 in C.S No 536 of 1999 for comparison by a competent handwriting expert with the signatures of the deponent found in the rejoinder affidavit of the 1st Respondent in A.No 5583 of 2022 in C.S No 536 of 1999 and the signatures of the 1st Respondent found in the deed of relinquishment dated 08.02.2017 registered as document no 506 in the office of the Sub-Registrar V (1)



3.A.No 976 of 2024 has been filed to compare the signatures of the deponent found in the affidavit filed in support of A.No 5583 of 2022 in C.S No 536 of 1999 with the signatures of the deponent found in the rejoinder affidavit of the 1st respondent in A.No 5583 of 2022 in C.S.No 536 of 1999 and the signatures of the 1st Respondent found in the deed of relinquishment dated 08.02.2017 registered as document no.506 in the office of Sub-Registrar V(1) New Delhi and pass such further or other order as may be deemed fit and proper in the circumstances of the case and thus render justice.

4. Before proceeding further, it is necessary to record the facts and the circumstances under which the above applications have been filed. The suit was filed by the Applicant/plaintiff for recovery of money to the tune of Rs 62,64,658.40 with interest @ 24 % per annum on Rs 40,67,960/- from the date of the plaint to actual date of payment. The respondents did not appear and they were set ex-parte and an ex-



WEB COPY

parte decree has been passed on 26.04.2012. Thereafter an Execution Petition was filed before this court in E.P No 151/2013 and the same was transferred to the file of the High Court of Delhi. The Execution Petition was renumbered as E.P No 258/2013 and then was again transferred to the District Court on the aspect of Pecuniary Jurisdiction and renumbered as E.P No 210/2017 and the same is pending. Whiles, the 1st respondent/defendant has filed an application to set aside the ex-parte decree along with the Condone delay petition, which is numbered as A.No 5583 of 2022 and the same is pending. Counter, Addiional counter and rejoinder affidavits have been filed by both the sides. Pending the applications, the matter was referred for mediation and was not settled. Thereafter, the above applications have been filed by the Applicant/plaintiff inter alia claiming that there is a variance in the signature of the 1st respondent in the vakalath, the Application no 5583/2022 when compared with his signature in the rejoinder affidavit and the Document registered in the office of the Sub-Registrar, New Delhi, that the 1st respondent was not in India at that time and hence could not have signed the Vakalat and the affidavit in Chennai . The applicant warrants that contempt action must be initiated against the 1st



WEB COPY

respondent as he has used false signatures. The 1st respondent has not only denied the contention that the signatures are false but also has accepted that the signatures were indeed put by him and the circumstances leading to the signing of the affidavit has been narrated in the affidavit along with an apology.

5.The Learned Senior Counsel for the Applicant vociferously contends that the 1st respondent whilst living in America has allegedly executed a vakalath dated 19.08.2022 and sworn an affidavit dated 04.09.2020 as if he was had temporarily come down to Chennai and signed the same, which is far from truth. The Learned Counsel referring to the rejoinder affidavit filed by the 1st respondent dated 27.12.2022, contended that the affidavit has been executed in America and attested by a notary public in the USA.

6.The Learned Senior Counsel also referred to the objection taken out in the additional counter, wherein a specific plea has been raised that the affidavit in A.No 5583/2022 is a false affidavit and hence the applicant must be proceeded against under the provisions of the Contempt of Courts Act and Article 215 of the Constitution of India.



WEB COPY

Learned Senior Counsel placing reliance upon the rejoinder affidavit dated 11.09.2023 contended that the 1st respondent himself has accepted that he was not present in Chennai when the affidavit was sworn by him and the explanation given by him ought not to be accepted and therefore, the attestation was not made in his presence. Further, it is the contention of the Learned Senior Counsel that there is a difference between the Vakalath executed on 19.08.2022, the signature in the affidavit filed on 04.09.2022 by the Applicant and his rejoinders and the relinquishment deed registered as Document no 506 in the SRO v(1) Delhi. According to the Learned Senior Counsel, the vakalath and the affidavit in the condone delay petition has been signed by some other person and therefore, a false affidavit has been filed before this Court and hence criminal action must be taken against the person under the provisions of Indian Penal Code. It is further contended that filing of a false affidavit also amounts to perjury and criminal contempt. The Learned Senior Counsel also insisted for comparison of the signatures in the documents referred above by the court as contemplated under Section 73 of the Indian Evidence Act or to send the admitted and disputed signature to an expert under Section 45. Relying upon the Judgements in 2022 SCC



WEB COPY

Online 858, 1996 (4) SCC 596, (2003) 3 SCC 583, (2005) 2 LW 694 (Mad) and 2012 (2) LW 653, sought for the applications to be allowed and appropriate action be initiated against the 1st respondent.

7.Per Contra, the Learned Counsel for the 1st respondent relying upon the counter affidavit contended that the 1st respondent has admitted that the signature in the affidavit was signed by him and there cannot be any dispute to it. It is also contended by the Learned Counsel that affidavit was signed, scanned and sent by him and that he had planned to visit India and that was the reason for stating in the affidavit that he had come down to Chennai. It is his further contention that due to unforeseen circumstances, the 1st respondent could not come to India and hence the affidavit was sent through a friend. The Learned Counsel fairly submitted that due to inadvertence the said affidavit was filed as such and it is only a mistake and was not done wilfully or wantonly. The Learned Counsel referring to para 6 of the common counter stated that an unconditional apology has been sought by the Applicant and reiterated that all the affidavits have been signed by him. The Learned Counsel further submits that since the 1st respondent has admitted the signature,



WEB COPY

the same cannot be treated as forged, bogus or fraudulent and as such no further action as sought by the applicant/plaintiff is necessary. The Learned Counsel further contended that the present applications have been preferred to protract the matter and to delay the decision in A.No 5583 of 2022 after contesting the same on merits. The Learned Counsel also submitted that the only person who could dispute the signatures is the 1st respondent and once, it has been stated by the executant that he had signed the document, the matter should end there. The Learned Counsel further contends that the applicant with an intention to drag the proceedings before this Court and to get some orders from the execution court in Delhi. The Learned Counsel also submitted that the relinquishment deed was executed in 2017 and minor differences occur in signature and that apart there is no difference in the signature. The Learned Counsel also pointed out that the signature of the applicant itself varies in different pages of the affidavit sworn by him. The counsel also sought liberty to file a fresh affidavit in A.No 5583 of 2022 and sought the dismissal of the Applications as frivolous and without merit.



WEB COPY

8.I have heard the counsels for the contesting parties at length and perused the materials.

9.The sum and substance of the contentions of the Applicant is that there is a variance between the signatures in the vakalath, the affidavit in A.No 5583 of 2002 on one hand and the rejoinders and the relinquishment deed on the other side, that since the 1st respondent was admittedly not in Chennai, the said affidavit is false and fabricated and appropriate action is warranted.The applicant has filed two applications to cover the provisions of Section 73 and Section 45 of the Indian Evidence Act, Section 73 of the Evidence Act, empowers the court to compare the signature required to be proved with the signature that has been admitted. Section 45 of the Evidence Act deals with the relevancy of the opinion of the experts. The line of judgments relied upon by the Learned Senior Counsel for the Applicant lays down the proposition that it is open for the court to compare the signature and if it is unable to come to any conclusion then it can refer it to the opinion of the expert which becomes relevant.



WEB COPY

10. Before advertizing in to the question of comparison, this court is of the view that the court must first come to a conclusion regarding the necessity of such comparison. Such necessity would arise only if there is a dispute in the signature of the executant by the executant himself. The question of dispute would arise when one party relies upon a document signed by another party and makes out a case in his favour based on the contents of such document and when the executing party denies his signature. It is also settled law that admission of signature would not amount to admission of the contents in the documents. In the present case, the 1st respondent has admitted all the signatures and even given a plausible reason for the jurat portion to reflect as if it was executed at Chennai. The object of the attestation is to ensure that the executant does not deny the execution. When the executant has not disputed the signature, the said affidavit cannot be treated as false or bogus and hence the question of comparison does not arise. Therefore, the judgments relied upon by the Learned Senior Counsel would not be applicable. This court is of the prima facie view that there is no variance in the signature. It is pertinent to mention here that to prosecute any person for forgery, only the person who has committed can be charged under Section 464. In the



WEB COPY

present case, the Applicant has contended that “some one” has forged the signature of the 1st respondent, when the 1st respondent has admitted the execution. This court is unable to comprehend any valuable reason for anyone to forge the signature of the 1st respondent and to file an affidavit to protect his interest without his knowledge. Such a contention is fallacious. The 1st respondent is the best person to protect his interest and according to him he has sworn the affidavit seeking condonation of delay. It is also settled law that an affidavit is a stand alone document and cannot be sent for comparison. Further, this court accepts the reasons stated in the counter affidavit as plausible and accepting the unconditional apology condones the lapse.

11. The 1st respondent has taken out the application to condone the delay in filing the application to set aside the ex-parte decree. If only the delay is condoned, the set aside petition will be considered. The averments in the affidavit are to be decided on its own merits, which was contested until the mediation. It is also pertinent to mention here that any piece of information acquired during the mediation cannot be part of subsequent proceedings in case of failure of the mediation. This court



WEB COPY

does not foresee any necessity for the 1st respondent to permit a third party to subscribe his signature at the risk of facing the applications like the present ones. On the other hand, the Applicant has already filed an execution petition and from the contentions, it is seen that it has reached an advanced stage. Therefore, the present applications are nothing but a frivolous attempt to drag the proceedings without permitting the court to decide the Application in A.No 5583 of 2022. Though it is a fit case for imposition of costs, this court refrains to do so.

12.In view of the findings rendered above, all the applications are dismissed without costs.

28.03.2024



WEB COPY



A.A. NAKKIRAN, J.

Lbm

A.No 974, 975 and 976 of 2024
In

A.No 5583 of 2022
In

C.S No 536 of 1999

28.03.2024



WEB COPY

