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IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Date of decision: 30th August, 2024***

\+ CM(M) 1078/2018

TUSHAR KANT GANGULI (DECEASED) THR LRS

.....Petitioner

Through: Mr. S k Bhaduri with Mr. Abid Khan, Ms. Shreyagna Bag, Mr. Neetu Gupta and Ms. Rimpy Rohilla, Advocate.

versus

SANJAY GUPTA

.....Respondent

Through: Mr. Visheshwak Shrivastava with Mr. Manoj K Gautam, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T *(oral)*

CM(M) 1078/2018 & CM APPL. 50143/2024

1. With the consent of both the parties, the application seeking early hearing is allowed and the matter, as a whole, has been heard today itself.

2. Petitioners are LRs of defendant-Tushar Kant Ganguli. They moved an application under Section 151 CPC before the learned Trial Court praying therein that handwriting expert be appointed to examine the disputed signatures of late Shri. T K Ganguli with his admitted signatures so as to arrive at a just and fair decision of the case.

3. According to the stand taken by the defendant, the alleged 'agreement to sell' and 'receipt' were forged and fabricated and these were not bearing

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signatures of Shri. Tushar Kant Ganguli.

4. The present case was earlier pending before this Court on original side and during the pendency of the case at that time, this Court vide order dated 14.12.2005 had sent the disputed document for comparison to CFSL. Unfortunately, the report received from CFSL was found to be inconclusive because of the fact that the signatures sent along with such disputed documents, were not sufficient for "comparison purpose".

5. When the case was still pending before this Court, the defendant moved another application under Section 151 CPC to send admitted and disputed signatures again to CFSL for comparison. However, such request was turned down by this Court as is evident from order dated 18.03.2008.

6. Ideally, if the defendant was aggrieved by dismissal of the aforesaid application, he should have filed a review. Instead of moving any such application seeking review, he has moved the above said application under Section 151 CPC, that too after around nine years, seeking almost similar request, couched in a very clever manner. By virtue of the aforesaid application, they want same very documents to be sent to some "neutral handwriting expert" instead of being sent to "CFSL".

7. The case is already at the stage of final arguments and as per order dated 31.07.2024 passed by the learned Trial Court, the suit in question is one of the twenty oldest matters pending in Court and, such case is listed tomorrow i.e. 01.09.2024 for hearing final arguments.

8. As already noticed above, the defendant should have moved the application much earlier in case he was not interested in filing any review to the above said order dated 18.03.2008. He cannot be permitted to do anything indirectly what he cannot do directly.

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9. Be that as it may, keeping in mind the overall facts and circumstances of the case, this Court does not find it to be a fit case where the Court should invoke its supervisory powers and interfere with the impugned order.

10. The petition is, hereby, dismissed. The next date i.e. 22.10.2024 stands cancelled.

11. Before parting, learned counsel for petitioner prays that he may be permitted to file an application seeking waiver of the cost imposed vide impugned order. The learned Trial Court would be at liberty to consider the same in accordance with law, irrespective of the dismissal of the present petition.

(MANOJ JAIN)
JUDGE

AUGUST 30, 2024/*sw*

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