

D/L- 26
19/03/2025
Ct. No.-6
Aritra

C.O. 951 of 2025

**Sandhya Rani Sau
Versus
Manas Kumar Kamila**

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K. Raihan Ahmed
Mr. Rudranil Das

...for the petitioner

Mr. Rajkumar Sain
Mr. Prithwish Guria
Mr. Sandipan Maity

....for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.91 dated February 20, 2025 passed by the learned Civil Judge (Sr. Div.), 2nd Court, Contai in O.S. No.12 of 2014.

By the order impugned the application filed by the petitioner herein praying for appointment of an handwriting expert stood rejected.

The opposite party herein filed a suit for specific performance of an agreement.

In such a suit the petitioner herein disputed her signature in the impugned agreement in the written statement by contending that the same is a forged one. The signature of the husband of the petitioner herein is alleged to be appearing as a witness to the said agreement for sale. The signature of the husband as a

witness to the said agreement has also been disputed by the petitioner in the written statement.

The petitioner filed an application for appointment of an handwriting expert in order to prove her case that her signature appearing in the impugned agreement was forged. Such application which was filed on March 19, 2014 was rejected by an order dated April 10, 2014. The said order was set aside by an order dated December 18, 2014 passed by a co-ordinate Bench in CO 1403 of 2014 with a direction upon the learned Trial Judge to decide the matter afresh in accordance with law. Pursuant to the said direction the learned Trial Judge by an order dated March 23, 2017 rejected the prayer for appointment of an handwriting expert by relying upon the proposition of law as recorded in the said order and by holding that without the concerned Bainanama being tendered in evidence the concerned document cannot be taken up for consideration of the prayer of the defendant. However, the learned Trial Judge while rejecting the petition dated March 19, 2014 at that stage as premature granted liberty to the defendant to file the same afresh after the concerned Binanama is tendered in evidence. Thereafter, the petitioner filed an application on June 12, 2018 for appointment of an handwriting expert. The said application was, however, rejected by an order dated July 7, 2018 with the observation that when the maker of the disputed document is available as witness then there is

no question of sending the document for seeking the opinion of the handwriting expert before examination of the maker. The learned Trial Judge while rejecting the petition dated June 12, 2018 granted liberty to the defendant to file the same afresh, if necessary, after the evidence is adduced by the defendant.

Mr. Mukherjee, leaned advocate appearing for the petitioner submits that a civil revision application being CO 2347 of 2018 was filed challenging the order dated July 7, 2018 but unfortunately the said civil revision application stood dismissed for default. An application for restoration has been taken out, but the same is still pending.

However, the fact remains that the order dated July 7, 2018 has not yet been set aside.

Thereafter, the petitioner, who was deposing as DW 1, during her cross-examination disputed her signature in the impugned agreement. She also disputed the fact that her husband was a witness to the impugned agreement.

At that stage the petitioner filed the present application under Order 26 Rule 9 read with Rule 10A of the Code of Civil Procedure on July 4, 2023.

The said application which was filed on July 4, 2023 was rejected by the learned Trial Judge by the order impugned.

Mr. Mukherjee, learned advocate appearing for the petitioner further submits that the application dated July 4, 2023 was filed pursuant to the liberty granted by the learned Trial Judge on an earlier occasion and, therefore, the same could not have been rejected on the ground that the same is barred by res judicata.

Per contra the learned advocate appearing for the opposite party submits that the principles of res judicata applies even at subsequent stages of the same proceeding. He further submits that the petitioner herein is trying to drag the proceedings by filing frivolous applications time and again and such application was rightly rejected by the learned Trial Judge.

After going through the order dated July 7, 2018 this Court finds that the issue as to whether appointment of handwriting expert is necessary or not, in the facts of the case on hand, was not decided by the said order as the learned Trial Judge was of the view that such stage has not yet arrived and granted liberty to the petitioner to file the same afresh.

No material has been produced before this Court to show that the issue as to whether appointment of an handwriting expert is necessary in the facts of this case has been finally decided by the learned Trial Judge at any earlier stage of this proceeding.

The principles of res judicata shall apply only if an issue has been finally decided one way or the other.

There are some interlocutory orders which do not decide in any manner the merits of the controversy in issue in the suit and do not also put an end to it even in past. Such interlocutory orders are capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge.

As observed hereinbefore, the issue with regard to appointment of handwriting expert has not been finally decided at an earlier stage. The question that arises is even if the rule of res judicata does not apply, whether repeated petitioners claiming same reliefs can be sought.

It is well-settled that if the principle of res judicata is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue, whereas in other cases, on proof of fresh facts, the Court would be competent, may would be bound to take those into account and make an order conformably to the facts freshly brought before the court. [See (**Arjun Singh vs. Mohindra Kumar & Ors.**) reported at **AIR 1964 SC 993** para 14].

In the case on case, the impugned application was filed bring on record fresh facts and a new situation. Therefore, the learned Trial Judge failed to exercise its jurisdiction by rejecting the application without taking into account the fresh facts and the new situation.

For such reason this Court is inclined to interfere with the impugned order. As the application for handwriting expert filed by the petitioner herein was rejected only on the ground that the same is barred by res judicata without entering into the merits of the said application, the impugned order is liable to be set aside and the same is accordingly set aside.

The application under Order 26 Rule 9 read with Rule 10A of the Code of Civil Procedure filed by the petitioner on July 4, 2023 is restored to the file of the learned Trial Judge.

The learned Trial Judge is directed to decide the application filed by the petitioner under Order 26 Rule 9 read with Rule 10A of the Code of Civil Procedure dated July 4, 2023 on merits in the light of the observations made hereinbefore after giving an opportunity of hearing to the learned advocates for the respective parties and by passing a reasoned order.

With the observations and directions CO 951 of 2025 stands allowed.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)