

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 1600 of 2025
Nripotee Ranjan Das
Vs.
Jharna Das**

WITH

CO 1599 of 2025

For the Petitioner	: Mr. Partha Pratim Ray Mr. Dyutiman Banerjee Mr. Samrat Chakraborty advocates
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For the Opposite Party	: Mr. Goutam Brahma Ms. Pampa Saha Mr. Subhajit Chattopadhyay ...advocates
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CAV on	: 08.05.2025
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Judgment on	: 21.05.2025
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Hiranmay Bhattacharyya, J.:-

1. These Civil Revision Applications were heard analogously as the same arises out of Title Suit No. 125 of 2012 pending before the learned Civil Judge, Junior Division, Kakdwip and the issues are also interlinked and for such reason, the same are decided by this common order.
2. CO No. 1599 of 2025 is at the instance of the defendant and is directed against an order being dated 30.11.2016 passed by the learned Civil Judge, Junior Division, Kakdwip, District- 24 Parganas (South) in Title Suit No. 125

of 2012. The order dated 25.03.2025 passed in the aforesaid suit is under challenge also at the instance of the defendant in CO No. 1600 of 2025.

3. By the order dated 30.11.2016, the application for appointment of hand writing expert was allowed. By the order dated 25.03.2025 the application filed by the petitioner for re-examination of the hand writing expert stood rejected.
4. The opposite party filed a suit for declaration of title and permanent injunction being Title Suit No. 32 of 2001 which stood transferred to the Court of the learned Civil Judge, Junior Division at Kakdwip and was renumbered as Title Suit no. 125 of 2012. The plaintiff/opposite party herein filed an application for comparison of the alleged signature of Jharna Das as appearing in the Exhibits F and C/1 with the admitted signature of Jharna Das as appearing in the deed of partnership and the balance sheet. The learned Trial Judge allowed such application by the Order dated 30.11.2016. Thereafter, the hand writing expert filed his report. Petitioner filed an application praying for re-examination of the hand writing expert. Such application was rejected by the Order dated 25.03.2025.
5. Mr. Ray learned advocate appearing for the petitioner contended that the plaintiff/opposite party herein adduced evidence as PW-1 and during cross-examination it was admitted by her that the signature appearing in the letter dated 12.12.2000 is her signature. He further submitted that in view of such admission in the evidence there was no necessity to appoint a hand writing expert as there is no dispute with regard to the genuineness of the signature of Jharna Das as appearing in the letter being Exhibit F. He thus submitted that the order allowing the appointment of hand writing expert should be recalled.
6. Mr. Ray further contended that the petitioner could not put certain questions to the handwriting expert during cross examination and for such reason, petitioner sought to recall the said witness for further cross examination.
7. Mr. Brahma learned advocate appearing for the opposite party raises an objection as to the maintainability of the application under Article 227 of the Constitution of India being C.O. 1599 of 2025 at such a belated stage. He

submitted that CO No. 1599 was filed more than 8 years after the passing of the order appointing a hand writing expert. He further contended that pursuant to the order the hand writing expert submitted his report and the hand writing expert has also been cross-examined by the defendants on several occasions. He, thus, submitted that at this stage there is no scope to challenge the order appointing the hand writing expert or rejection of the prayer for re-examination of the hand writing expert.

8. Heard the learned advocates for the parties and perused the materials placed.
9. Before entering into the merits of the C.O. No. 1599 of 2025, this Court has to first deal with the objection raised by the learned advocate for the opposite party against the maintainability of the said Civil Revision application.
10. Though there is no prescribed period of limitation for filing an application under Article 227 of the Constitution of India, it is well-settled that the period of limitation prescribed for filing an application under Section 115 of the Code of Civil Procedure may be taken to be the reasonable time limit within which an application under Article 227 is to be filed. In case, there is some delay in filing an application under Article 227 of the Constitution of India, such delay has to be explained.
11. In the case on hand, the reasons for the delay in filing C.O. no. 1599 of 2025 as stated in the said application is not very convincing but taking into consideration the fact that the petitioner has raised a legal issue and the learned advocates of both sides advanced their arguments on merits of the said application, this Court is inclined to exercise discretion in favour of the petitioner and entertain the said Civil Revision application and decide the same on merits.
12. The opposite party herein applied for appointment of a handwriting expert which stood allowed and the handwriting expert was directed to compare the disputed signature of Jharna Das with her admitted signature. The handwriting expert after making such comparison submitted his report.
13. Mr. Ray, learned advocate for the petitioner contended that Jharna Das adduced evidence as PW-1 and during cross-examination she admitted her

signature in the document in question. He, therefore, submits that in view of such admission in the evidence, the order directing the Handwriting expert to give his opinion with regard to the disputed signature is liable to be set aside.

14. Such issue has become academic at this stage for the reasons as stated hereinafter.
15. Pursuant to the order passed by the learned trial judge dated 30.11.2016, the handwriting expert submitted his report.
16. Order 26 Rule 9 of the Code of Civil Procedure empowers the Court to issue commission to make local investigation which the Court considers to be requisite or proper for the purpose of elucidating any matter in dispute.
17. Rule 10 of Order 26 of the Code deals with the procedure of Commissioner. It states that the Commissioner after local inspection shall submit a report together with the evidence.
18. Order 26 Rule 10 A (1) of the Code states that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the court, the court may, if it thinks it necessary or expedient in the interest of justice so to do, issue a commission for inquiring into such question and report thereon to the Court.
19. The provisions of Rule 10 of Order 26 has been made applicable in relation to a Commissioner appointed under Rule 10 A as they apply in relation to a Commissioner appointed under Rule 9 by virtue of Sub Rule (2) of Rule 10 A of Order 26.
20. Rule 10(2) mandates that the report of the Commissioner and the evidence taken by him shall be treated as the evidence in the suit and shall form part of the record. The said rule further enables the Court on its own or any of the parties to the suit, with the permission of the Court, to examine the Commissioner. Such examination of the Commissioner may be touching upon (a) any of the matters referred; (b) any of the matters mentioned in the report; (c) as to the report of the Commissioner; or (d) as to the manner in which he has made the investigation.

21. Upon a conjoint reading of Order 26 Rule 10A (2) and Rule 10(2), this Court holds that the report of the Commissioner appointed for scientific investigation and the evidence taken by him shall be evidence in the suit and shall form part of the record. It is well settled that there is no requirement either in Rule 10 or Rule 10 A of Order 26 that the report cannot be treated as evidence unless the Commissioner is examined as a witness. **[See (2020) 1 SCC 1 (paragraphs 656 and 658) in the case of M. Siddiq (Ram Janmabhumi Temple vs. Suresh Das)]**
22. Mr. Ray, learned advocate for the petitioner in course of his argument, could not point out any provision of law that authorize the Court to set aside a Report of an Expert which the statute mandates to be treated as an evidence and shall form part of the record. Neither Rule 10 nor Rule 10 A authorizes the Court to set aside such report of the Scientific Investigation Commissioner.
23. For all the reasons as aforesaid, this Court is not inclined to interfere with the order appointing the Commissioner for scientific investigation.
24. Now, this Court shall decide the issue with regard to rejection of the prayer for re-examination of the handwriting expert.
25. It appears from the record that the hand writing expert has submitted his report. The report of a hand writing expert is only a piece of evidence which shall be considered along with other evidences available in the record. The defendant/petitioner herein cross examined the hand writing expert extensively on 04.02.2020 and 06.03.2020. After going through the application for re-examination of the hand writing expert this Court finds that the defendant did not assign satisfactory explanation for re-examination of the hand writing expert. In course of his argument, Mr. Ray could not satisfy this Court as to how recalling of the handwriting expert for further cross-examination by the petitioner will assist the Court in rendering justice or to clarify certain issues.
26. The learned Trial Judge recorded that the evidence of the handwriting expert has been closed as per the prayer of the defendant. It was also recorded in the impugned order that the defendant could not satisfy the Court as to why he wants to re-examine the handwriting expert.

27. To the mind of this Court, the learned Trial Judge assigned cogent reasons for not exercising discretion in favour of the defendant/petitioner herein. That apart, it is well settled that recalling of witness is not permissible to fill up the lacunae in evidence. This Court does not find any infirmity in the order rejecting the petition for re-examination of the handwriting expert.
28. For all the reasons, as aforesaid, this Court is not inclined to interfere with the order rejecting the petition filed by the defendant/ petitioner herein for re-examination of the hand writing expert.
29. Accordingly, CO No. 1599 of 2025 and CO No. 1600 of 2025 stand dismissed.
30. There shall be, however, no order as to costs.
31. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)