

Sl.30
04.08.2025
Court No.6
BP

C.O. 2767 of 2024

Sahida Khatun & Ors.
-versus-
Amar Karmakar & Ors.

Mr. Gour Baran Sau
... for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order being no. 104 dated February 26, 2024 passed by the learned Civil Judge (Junior Division), 1st Court at Malda in O.C. No.163 of 2012.

By the order impugned the application for appointment of an expert for comparing the LTI of the plaintiff no.1 with the LTI on the deed nos. 6469, 6470, 6471, 6472 and 6473 dated 8th October, 1991 was allowed.

The learned advocate appearing for the petitioners submits that in course of cross examination the P.W.-1 admitted that he will not pray for any handwriting expert. He further submits that the application for appointment of an expert was filed at a belated stage when the suit was fixed for argument. He further submits that such an application was filed only for the purpose of filling up the lacuna in evidence which is not permissible in law. In

support of such contention he places reliance upon a decision of a Co-ordinate Bench in the case of Dr. Snehasish Datta Vs. Ayan Kumar Roy reported at 2023 SCC OnLine Cal 1938.

The opposite parties filed a suit for declaration that the sale deed being nos. 6469, 6470, 6471, 6472 and 6473 dated 8th October, 1991 is a fraudulent and forged deed and for declaration of the title of the opposite parties in respect of the suit property. The said suit is being contested by the petitioners herein by filing a written statement. During the pendency of the said suit the petitioners filed an application under Order 26 Rule 10A of the Code of Civil Procedure praying for appointment of an expert for the purpose of comparing the LTI of Amar Karmakar with the LTI as appearing in the said five deeds and for the purpose of ascertaining as to whether the LTI as appearing in the said deed belonged to Amar Karmakar.

After going through the pleadings this Court finds that the opposite parties have challenged the execution of the said deeds and have prayed for declaration that the said deeds are a product of forgery.

Merely because of the fact that the P.W.-1 in the cross examination stated that he would not pray for appointment of handwriting expert in respect of the disputed deeds, the same cannot be an embargo upon a party for filing an application for appointment of an

expert for comparison of the LTI if the same is necessary for the purpose of deciding the real controversies between the parties and for rendering justice.

In the case on hand, it is the specific case of the plaintiff that the deeds are a product of forgery and the LTI as appearing in the deeds are not that of Amar Karmakar. In order to decide whether the LTI appearing in the deeds are that of Amar Karmakar or not, a scientific investigation by way of appointment of an expert in that field would assist the Court in rendering justice. It is well settled that Court in exercise of its inherent powers can allow a party to produce evidence even at the stage of argument if the same is necessary for rendering justice.

The learned trial judge rightly observed that for administration of proper justice both the parties should be given opportunity to prove their case and taking note of the fact that such application was filed at an advanced stage i.e. at the stage of argument imposed a cost upon the petitioners.

For such reasons, this Court is not inclined to interfere with the order impugned.

In Dr. Snehasish Datta (*supra*) an application was filed for appointment of a handwriting expert for comparing the admitted signature of the plaintiff in the vakalatnama with the signatures on the rent receipts being Exhibits A, A1, B1 and B2 filed by the DW-1 and

DW-2 in order to ascertain whether they are identical or whether any interpolation had been made. The Coordinate Bench in paragraph 12 of the said reports specifically observed that the rent receipts filed by Joydeb Mondal being Exhibits B1 and B2 are not relevant for adjudication of the present suit.

In view thereof, the said decision cannot come to aid of the petitioners as this Court has already observed that for the purpose of rendering justice the appointment of an expert is necessary.

For all the reasons as aforesaid, C.O. 2767 of 2024 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)