

JPD-05
Ct No.01
02.08.2025
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 15 of 2023

Smt. Sabari Thakur
Vs.
Sri Dhiren Kumar Das

Mr. Soumyajyoti Dutta,
Mr. Anurag Sharma,
Ms. Nikita Agarwal

.... for the petitioner

Mr. Tapash Kumar Bhattacharya,
Mr. Bikash Singha

....for the opposite party

1. The defendant in a money suit has preferred the present revisional application against an order whereby the petitioner's application under Order XXVI Rule 10A of the Code of Civil Procedure, seeking the appointment of a handwriting expert to compare the handwriting of the husband of the petitioner in Exhibit-1, a purported challan, with another document which was produced by the plaintiff/opposite party himself and was admittedly executed by the husband of the petitioner, was refused.
2. Learned counsel for the petitioner submits that the learned Trial Judge resorted to complete conjecture and surmise in pre-judging the

evidentiary value while turning down the said application.

3. It is contended that the report of the handwriting expert, if obtained, shall be the best piece of evidence to ascertain the dispute as to whether the purported challan bearing Exhibit-1 was written by someone else than the husband of the petitioner or it was actually written by the husband of the petitioner.
4. Learned counsel appearing for the plaintiff/opposite party opposes the prayer and submits that the document-in-question has already been marked as Exghibit-1 and, as such, the admissibility of the same cannot be raised at this subsequent stage when the evidence is over and arguments are about to commence.
5. Learned counsel places reliance on the judgment of *Javer Chand and others v. Pukhraj Surana*, reported at *AIR 1961 SC 1655* in support of his proposition.
6. Learned counsel next places reliance on Section 73 of the Indian Evidence Act and submits that in order to ascertain whether a signature or writing is that of a person by whom it purports to have been made, any such signature, etc., or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved, although that

signature, writing, etc., has not been produced or proved for any other purpose. It is submitted that if the court itself compares the handwriting of the husband of the petitioner, with that of the Exhibit-1, the opposite party shall not have any serious objection.

7. However, the appointment of expert was rightly turned down by the learned Trial Judge.
8. Upon hearing learned counsel for the parties, this Court is unable to accept the contention of the opposite party. Insofar as the marking of the disputed document as Exhibit-1 is concerned, the document itself, although marked as an exhibit, and the signature of the defendant/petitioner thereon admitted, it is the specific defence case, as borne out by the written statement as well as the evidence of the husband of the petitioner, is that although the petitioner signed the said document, the same was a blank document at the juncture of signature and was subsequently filled in by a third party who is definitely not the husband of the petitioner.
9. Thus, the germane consideration on the plinth of the defence case is the veracity of the handwriting alleged to be of the husband of the petitioner on the disputed document, being Exhibit-1.
10. Thus, the report of the handwriting expert, if obtained, would undoubtedly be the best piece of

evidence to prove the defence case and/or to disprove the case of the plaintiff.

11. Apart from the learned Trial Judge having overlooked such obvious aspect of the matter, thereby committing a jurisdictional error, the learned Trial Judge entirely proceeded on pre-judging the evidentiary value of Exhibit-1 by resorting utterly to conjecture and his preconceived notions. For example, the learned trial Judge recorded in the order that it is asserted by the defendant that her husband put his signature on a blank challan, which is palpably incorrect on the face of the document and the pleadings. It is not the case of the petitioner that her husband put the signature on a blank challan but that she herself had put such signature and that her husband has not filled up the challan in his handwriting.
12. The learned trial Judge further observes, due to some unknown reason, that the conduct of a person in putting one's signature on a blank business document must inherently "arise dissatisfaction" and reservation in the mind of the court. The court says that it is a reasonable expectation from a person of authority that he would put his signature on any document responsibly, by which he means that the person shall ratify and/or certify the propriety and/or

genuineness of the contents of the documents. It is further observed that no person should be allowed to take such plea and evade responsibility by simply stating that he put his signature while the document was lying blank and that if the courts meekly swallow such document, commercial immorality would be encouraged. Besides, the learned trial Judge went on to observe that in that case the person in whose favour the challan was executed would remain practically remediless.

13. It is also observed by the learned trial Judge that a business document admittedly bearing the signature of the executant should be rendered useless at the whims of the executor.
14. Such notions belong absolutely to the personal domain of the learned trial Judge's mind and have no bearing with legal propositions at all.
15. Whatever the learned Trial Judge meant by the doctrine of "commercial immorality", which he himself propounded, if every document was to be taken on face value, half the courts would be without any litigation to adjudicate on.
16. "Responsibility" and "commercial immorality" are concepts which are alien to law.
17. Rather, when a specific challenge has been raised in the pleadings as well as the evidence of the defendant to a particular handwriting depicted on

a disputed document, it is the incumbent duty of the court to permit expert evidence to be adduced on the same.

18. The reliance of the opposite party on Section 73 of the Indian Evidence Act is misplaced, since the same only propounds that in order to ascertain a signature, the court has to be satisfied of the veracity of the same and the court may direct any person present in court to write any word or figure for the purpose of enabling the court to compare the word or figure so written with any words or figures alleged to have been written by such person.
19. However, Section 73 has to be read with Section 45 of the Evidence Act. Section 45 provides that when the court has to form an opinion upon a point, *inter alia*, of identity of handwriting, the opinions upon that point of persons specially skilled in such question as to identity of handwriting are relevant facts.
20. Since the defendant/petitioner in the present case merely seeks to prove a relevant fact by calling for an expert, there was no conceivable reason why the same should have been dismissed by the learned Trial Judge, since it has a germane bearing and is the single-most important evidence which can be led to prove or disprove the defence case.

21. Insofar as the other contention of the opposite party is concerned, the cited judgment has no manner of application whatsoever to the present case. The same was rendered by the Supreme Court in the context of objection as to admissibility of an unstamped document or document having deficiency of stamp duty. Section 36 of the Stamp Act clearly provides that unless such objection as to admissibility of the document on the ground of deficiency of stamp is taken at the outset when the document is marked as exhibit, the same cannot be raised later. However, subsequent judgments of the Supreme Court itself have diluted the said proposition, since the court is not debarred, even if the parties are, from looking at the admissibility of such document at the stage of hearing. By that as it may, such objection pertains to admissibility on a specific question of deficiency of stamp, which is not the present case.
22. Another important and well-settled proposition of law is that there are two sorts of objections which can be taken to a piece of evidence – regarding admissibility and regarding evidentiary value thereof. It has been settled by a long line of decisions of the Supreme Court that the two operate in different fields. Whereas the objection

as to admissibility of an evidence has to be taken at the point of time when the document is sought to be marked as exhibit and cannot be taken later, a question as to evidentiary value of the said evidence can be taken at any point of time before the trial is over.

23. The question raised by the defendant/petitioner in the present case is not one of admissibility of the document but of the evidentiary value of the same. It is trite law that mere marking of a document as exhibit does not necessarily mean that the veracity or authenticity of the contents thereof automatically go into evidence or become sacrosanct.
24. The nature of objection here is that the defendant/petitioner admittedly signed the Exhibit-1, but her husband did not write the contents thereof. Thus, there is no question as to admissibility raised here. The doubt raised is as to whether the document, at the time of signing, was blank and subsequently filled in by some person other than defendant/petitioner's husband. For that purpose, the defendant/petitioner has merely sought for appointment of an expert to compare the handwriting of the husband of the petitioner from a document (Exhibit-5) which has already been marked by the plaintiff/opposite party himself

and, thus, is obviously an admitted handwriting of the husband of the petitioner, with the disputed handwriting of the husband in Exhibit 1.

25. A mere comparison between the said handwriting of the husband in Exhibit-5 with that purportedly written by him in Exhibit-1 is what is required for a proper and complete adjudication of the suit and has been sought by the petitioner.
26. Thus, the learned Trial Judge went tangentially, completely on extraneous considerations, in dismissing such prayer of appointment of handwriting expert.
27. Accordingly, the impugned order cannot be sustained from any perspective whatsoever.
28. Hence, CO 15 of 2023 is allowed on contest, thereby setting aside the impugned order bearing Order no. 77 dated January 25, 2023 passed by the learned Civil Judge (Senior Division) at Jalpaiguri in Money Suit No. 34 of 2015, whereby the defendant's application under Order XXVI Rule 10A of the Code of Civil Procedure was rejected. The said application of the defendant/petitioner is hereby allowed, thereby directing the learned Trial Judge to appoint a handwriting expert to compare between the alleged handwriting of the husband of the petitioner in Exhibit-1 with the admitted

handwriting of the said husband in Exhibit-5, in terms of the prayers made in the said application. It is expected that such exercise of appointment of expert shall be concluded by the learned Trial Judge expeditiously, preferably within a fortnight from the date of communication of this order to the court below.

29. In view of the long pendency of the suit, it is expected that the same shall be decided expeditiously, without granting unnecessary adjournments to either party.
30. There will be no order as to costs.
31. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)