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IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.838 of 2016

[CNR No. ODHC01-053850-2016]

An application under Article 227 of the Constitution of India, 1950.

Jishuram Marndi …. **Petitioner**

-versus-

Radheshyam Parida …. **Opposite Party**

Advocates who appeared in this case through Hybrid Mode:

For Petitioner : Mr. Abhilash Mishra, Advocate

For Opposite Party : Mr. Swarup Kumar Patnaik, Advocate

CORAM:

THE HON'BLE MISS JUSTICE SAVITRI RATHO

J U D G M E N T

Date of hearing : 03.08.2026 :: Date of Judgment : 31.10.2026

Savitri Ratho, J. This CMP has been filed by the Plaintiff challenging the order dated 20.04.2016 passed by the learned Senior Civil Judge, Rairangpur in Civil Suit No.113 of 2014 allowing the petition filed under Order 26 Rule 10-A read with Section 151 of the CPC by the

Defendant for sending the specimen signature of the Plaintiff to the expert.

BRIEF FACTS OF THE CASE

2. The Petitioner as plaintiff filed the suit before the learned Senior Civil Judge, Rairangpur for declaring agreement dated 10.11.2012 to be null and void and for other ancillary reliefs, with specific averments that the Defendant had taken his signatures in the blank papers which the plaintiff who is a close friend had given without hesitation and the same has been misutilised by the Defendant by creating the agreement.

3. Pursuant to receipt of notice, the Defendant appeared in the suit and filed his written statement denying the plaint allegations stating that the Plaintiff settled the consideration amount of the alleged vehicle at Rs.4,40,000/- out of which dues of the financer was Rs.3,16,000/- and also stated that the Plaintiff had executed the agreement dated 10.11.2012.

4. After issues had been settled and hearing had commenced, the Plaintiff examined himself as P.W.1 and was cross-examined by the Defendant, the latter filed an application under Order 26

Rule 10-A read with Section 151 CPC for appointment of a commissioner for scientific investigation on the ground that the Plaintiff was denying his signature on some documents which requires a proper scientific investigation for proper adjudication.

5. Objection was filed by the Plaintiff stating the Petition was not maintainable and it should be rejected as it had been filed at a belated stage to patch up lacuna in the case of the Defendant.

IMPUGNED ORDER

6. The learned trial Court referred to issue *"Has the Defendant paid Rs.90,000/- on 06.11.2012 and Rs.34,000/- on 17.11.2012 to the plaintiff through money receipts and cleared all the dues of financier company and purchased the alleged vehicle from the plaintiff."* and observed that the Plaintiff has not admitted his signatures on the two money receipts and in the affidavit sworn by him. Referring to Section 73 of the Indian Evidence Act, held that it would be just to get the disputed signatures compared with the admitted signatures of the Plaintiff by an expert. The learned trial Court also observed that the application had been made shortly after commencement of the evidence and before conclusion of their

evidence, hence there was no delay. The learned trial Court directed for "*the comparison of disputed signatures and admitted signatures six sheets of specimen signatures each containing six signatures in each sheet i.e. 6 x 6 = 36 signatures of the plaintiff is required to send the same to the S.P., CID, CB, Odisha for comparison*."

SUBMISSIONS

7. I have heard Mr. A. Mishra, learned counsel for the Petitioner and Mr. S.K. Patnaik, learned counsel for the Opposite Party.

COUNSEL FOR THE PETITIONER

8. Mr. Mishra, learned counsel for the Petitioner submitted the power of appointment of commissioner for scientific investigation cannot be exercised by the learned court below to assist any party to collect evidence where such evidence can be produced by the party. The evidence of the plaintiffs was continuing and closure memo had not been filed by the Opposite Party. So the appointment of commissioner for scientific investigation at this juncture will vitiate the trial proceeding for

which the order dated 20.04.2016 being illegal, arbitrary and contrary to law is liable to be quashed. The object of O-26, R-10-A C.P.C is for elucidating any matter in dispute by local investigation at the spot and not to aid any party in adducing evidence. A Commissioner can be appointed, where the court is satisfied that on the materials available on record the party is not able to produce the desired evidence for reasonable circumstances. In the instant case, as the evidence is yet to be adduced by both the parties, appointment of the commissioner at this stage will amounts to collection of evidence and will vitiate the process of trial. As the plaintiff was denying in his evidence regarding putting of his signature in the money receipt, but ignoring his deposition the court below allowed the petition and directed for scientific investigation, for which the order dated 20.4.2016 is illegal, arbitrary and liable to be quashed.

COUNSEL FOR THE OPPOSITE PARTY

9. Mr. Pattnaik, learned counsel has submitted that no interference is called for in the impugned order as it is a reasoned one and will decide the dispute between the parties. As the plaintiff

has deliberately denied his signatures on the two money receipts dated 06.11.2012 and 17.11.2012 and the front of the affidavit, so examination of his signatures by a handwriting expert would unravel the truth and would be effective for deciding the lis.

In support of his submission, he has relied on the following decisions.

(i) ***Laxmi Bai vs. A. Chandravati : 1994 SCC OnLine Ori 51 : AIR 1995 Ori 131***

(ii) ***Bhagirati Sahu and others vs. Akapati Bhaskar Patra : AIR 2001 Ori 185***

(iii) ***Sibaram Subudhi vs. Padmabati Patra : 2016 (I) OLR 24.***

STATUTORY PROVISION

10. The provision of Order 26, Rule-10-A C.P.C. and Section 73 of the Indian Evidence Act which are relevant for deciding this CMP are extracted below :-

Code of Civil Procedure

75. Power of Court to issue commissions.-Subject to such conditions and limitations as may be prescribed, the Court may issue a commission-

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or

(d) to make a partition;

(e) [to hold a scientific, technical, or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit

(g) to perform any ministerial act.]"

Order 26 Commissions

*"**10-A. Commission for scientific investigation**.- (1) 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 interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.*

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9."

Indian Evidence Act

"Section 73. Comparison of signature, writing or seal with others admitted or proved.

In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted 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 or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."

JUDICIAL PRONOUNCMENTS

11.1 In the case of ***Kessarbai v. Jethabhai Jivan, AIR 1928 PC 277****, it has been held as follows :*

"It is unsatisfactory and dangerous to stake a decision, in a case where there is a direct conflict of testimony between parties as to general character of a signature, on the correct determination of the genuineness of the

signature by mere comparison with the admitted signatures, especially without the aid in evidence of microscopic enlargments or any expert advice."

11.2 The Supreme Court in the case of ***State (Delhi Administration) vs Palli Ram : AIR 1979 SC 14***, has held as follows: -

"The matter can be viewed from another angle also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identify of a handwriting which forms the sheet- anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other: and the prudent course is to obtain the opinion and assistance of an expert."

11.3 In the case of ***Laxmi Bai*** (supra)**,** a Division Bench of this Court was considering whether the Court should arrogate itself the

role of an expert and compare disputed writings of a person with other writings to form its opinion and arrive at a conclusion on the question of identification of handwriting which are admitted or proved to be his own writings. Relying on the decision in ***Palli Ram*** (supra), it was held as follows:

> *"9. We may state here that under Section 73 of the Evidence Act, a Court is competent to compare the disputed writings of a person with other writings which are admitted or proved to be his writings. Such comparison by the Court is with a view to appreciate properly the other evidence available on record on the question of writings. It would, however, be too hazardous for a Court to use his own eyes and merely on the basis of personal comparison decide a very vital issue between the parties centering round the handwriting or signature of a person"*

11.4. The Supreme Court in the case of ***O. Bharathan v. K. Sudhakaran: AIR 1996 SC 1140,*** has relied on its decision in the case of ***Palli Ram*** (supra) and held as follows : -

> *"... Notwithstanding the above fact, namely, the learned Judge while doubting the testimony of the witnesses,*

instead of confronting them in a legal way to get the truth, jumped to his own conclusion. The learned judge in the course of appreciating the scope of Section 73 of the Evidence Act and having given a finding that under Section 73 of the Evidence Act a disputed signature could be compared only with the admitted signatures, proceeded to compare the signatures found in the counterfoils to find out whether both the signatures were to be by the same person.

On the peculiar facts of this case, the learned Judge erred in taking upon himself the task of comparing the disputed signatures on the counterfoils without the aid of an expert or the evidence of persons conversant with the disputed signatures. Therefore, the approach made by the learned judge is not in conformity with the spirit of Section 73 of the Evidence Act. Though the rulings of this Court in ***State vs. Pali Ram (AIR 1979 SC 14)*** *and* ***Fakhruddin vs. State of Madhya Pradesh (AIR 1967 SC 326)*** *were brought to his notice, the learned judge proceeded to compare the disputed signatures by himself and decided the issue."*

11.5 In the case of ***Bhagirati Sahu*** (supra), this Court has held as follows:-

"*10. The next question that arises for consideration is as to whether the impugned order rejecting the petitioners' application for sending the disputed signature appearing in Ext. 2 for examination and opinion of the handwriting expert is in accordance with law and can be sustained. The suit for specific performance of contract which is under adjudication was at the instance of the plaintiff-opp. party on the basis and foundation that the defendant No. 1 had executed a deed of agreement to sale the disputed property (Ext.2) in favour of the plaintiff-opp. party. The specific plea of the defendants-petitioners was that the document (Ext. 2) was a forged and fabricated one wherein the signature of defendant No. 1 has also been forged and as such, the said document should be sent for the opinion of the handwriting expert. An application under Order 26 Rule 10 (A) C.P.C. was filed for sending the same for examination by the handwriting expert. A learned single Judge of this Court as already discussed in* ***Durga Prasad Agarwalla's case (1996 (82) Cut LT 737****) (supra) while dissenting from the decision of a learned single Judge in* ***Sabitri Debi's case (1979) 47 Cut LT 266: (AIR 1979 Ori 140****) (supra) in view of the decision of the Apex Court in:* ***AIR 1979 SC 14*** *has taken the view that even if the Court has the power to compare the disputed writing with the admitted or proved writing to ascertain*

whether the disputed writing is that of the person who is stated to have written, as a matter of prudence the Court should not venture such comparison by itself and should take the assistance of expert's opinion In arriving at a finding."

11.6. In the case of ***Shalini Shyam Shetty v. Rajendra Shankar Pati: (2010) 8 SCC 328*** the Supreme Court has held as follows : -

"*62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*

a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or

courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. (d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh5 and the principles in Waryam Singh (Supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (Supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority"

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of

superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised

i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High

Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant

for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

11.7. This Court in the case of ***Sibaram Subudhi*** (supra), regarding exercise the power of superintendence of the High Court under Article 227 of the Constitution and power under Section 75 of the Civil Procedure Code and Order 26, Rule 10- A of the CPC, has held as follows:-

"10. The parameters of challenge have been laid down by the apex Court in catena of decisions. Under Article 227 of the Constitution, the High Court has the power of superintendence over all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. The power of superintendence conferred upon every High Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate Courts and Tribunals act within the limits of their authority and

according to law. Under Article 227 what comes up before the High Court is the order or judgment of a subordinate court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate court or tribunal has acted within its authority and according to law. The proceeding under Article 227 is not an original proceeding as held by the apex Court in the case of ***Umaji Keshao Meshram and others v. Smt. Radhikabai and another, AIR 1986 SC 1272.***

11. The power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases in order to keep the subordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors as held by the apex Court in the case of ***Waryam Singh and another v. Amarnath and another, AIR 1954 SC 215.***

12. Section 75 of the Civil Procedure Code (hereinafter referred to as "the CPC") defines the power of Court to issue commissions. The said section was amended by Act 104 of 1976. Clauses (e) to (g) were inserted by the aforesaid amendment. The detail provisions of commissions have been set out in Order 26 of the CPC. As a consequence of the amendment made in the CPC, new

Rules 10-A to 10-C have been inserted under Order 26 of the CPC. The power of the court to issue commission has been widened by virtue of the amendment made in Section 75 of the CPC. Clause (e) of Section 75 of the CPC empowers the Court to issue commissions to hold a scientific, technical, or expert investigation when it is needed for determination of any issue before the court. Order 26 Rule 10-A of the CPC provides 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 is necessary or expedient in the interest of justice so to do, issue a commission to such person as it thinks fit, directing him to enquire into such question and report thereon to the Court.

13. A Division Bench of this Court, in the case of ***Natabar Behera v. Batakrishna Das: 62 (1986) CLT 613*** *came to hold that scientific examination means ascertainment by observation and experiment critically tested, systematized and brought under a set of principles. Comparison of a disputed signature with the admitted ones involves specialized skill based on study. It, therefore, comes within the scientific investigation and cannot be done by a lay man without having the scientific knowledge and specialisation on the subject. The*

handwriting experts for the purposes of comparison of the handwritings take enlarged photographs of the disputed and the admitted writings and examine the same by application of recognized principles and by critical tests which in most cases cannot be conveniently conducted before the court. In the said case, the genuineness of the signatures in the agreement having been disputed, the learned trial court issued a commission for investigation by an expert. The said order was affirmed in the aforesaid case."

ANALYSIS AND CONCLUSION

12. After a careful reading of the provisions of Sections 75 and Order 26, Rule 10 -A of the C.P.C; and the decisions referred to above, it is apparent that a Judge may use his own eyes to compare a disputed handwriting or signature with an admitted one without the aid of a handwriting expert, but it is a rule of prudence to obtain opinion and assistance of a handwriting expert in such matters.

13. It is also no longer *res integra* that power under Article 227 of the Constitution of India , is to be exercised sparingly and interference is warranted when the impugned order suffers a manifest illegality, a patent jurisdictional error or has resulted in

gross failure of justice with the High Court has to see if the trial Court or appellate court acted within the limits of their authority and such power is to be used sparingly and not exercised for correction of mere errors.

14. After hearing the learned counsel for the parties and the decisions referred to above, I am of the considered view that the opinion of the Scientific expert who will examine the handwriting and signatures of the plaintiff which he has disputed / denied with his admitted signatures, would aid the learned trial court in deciding the suit .

15. The direction of the learned trial court to send the disputed signatures and admitted signatures six sheets of specimen signatures each containing six signatures in each sheet i.e. 6 x 6 = 36 signatures of the plaintiff to the S.P., CID, CB, Odisha for comparison, cannot be found fault with.

16. In order to decide the suit, power under Order 26, Rule 10-A of the CPC could also have been exercised suo motu by the learned trial court, if it felt that such scientific examination was necessary for arriving at a correct decision in the suit. Hence I find no

illegality or perversity in the impugned order that it passed such an order on the application of the defendant.

17. The evidence of the plaintiff had not been completed when the impugned order was passed. In the meanwhile about ten years have elapsed. It would therefore be in the interest of justice if the documents are sent for scientific examination (as directed by the impugned order), after completion of evidence of the plaintiff.

18. The learned trial Court should make an endeavour for disposal of suit within a period of six months.

19. As I do not find any ground to interfere with the impugned order in exercise of power under Article 227 of the Constitution of India, the CMP is dismissed.

20. Interim order passed in Misc case No 839 of 2016 stands vacated and the Misc case is disposed of.

21. Copy of this order be communicated to the learned Senior Civil Judge, Rairangpur in Civil Suit No.113 of 2014 by the Registry forthwith.

(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated, the 31st October, 2026/RKS

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