

(2022) 01 DEL CK 0094

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No.620 Of 2019

Dr. Rakesh Varma

APPELLANT

Vs

Vidya Sagar Bhagat (Deceased) Thr Lrs & Anr

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

CodeOf Civil Procedure, 1908 — Order 47, Section 114, 151
Evidence Act, 1872 — Section 45

Citation : (2022) 01 DEL CK 0094

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Shankar Vaidyalingam, Baldev Krishan, Kuljeet Rawal

Final Decision : Dismissed

Judgement

Prathiba M. Singh, J

REVIEW PET. 492/2019

1. This hearing has been done through video conferencing.
2. The present review petition filed by the Review Applicant/Respondent/Defendant No.2 (hereinafter â??Defendant No.2â?) under section 114 of the CPC read with Order 47 CPC seeks review of the order dated 11th September, 2019 passed by this Court. By the said order, the impugned order dated 8th January, 2019 in C.S. No.612619/2016 titled Dr. Rakesh Verma Vs. Vidya Sagar Bhagat passed by the Id. ADJ-03/West District/Tis Hazari Courts, Delhi (hereinafter â??Trial Courtâ?) granting Defendant No.2 the liberty to lead the evidence of the handwriting expert thirty years after the suit was filed was set aside.
3. The review petition is premised on the order dated 11th November, 2019

passed by the Supreme Court in SLP(Civil) No. 26334-35 of 2019 titled

Suresh Manasharamani v Rakesh Varma & Anr. wherein, the Supreme Court observed as under:

“The principal argument of the petition is that the respondents moved the High Court at a belated stage and in particular only after the

report of handwriting expert was received placed on record before the Trial Court. This aspect, presumably, was not brought to the notice

of the High Court.

In that case, it will be open to the petitioner to approach the High Court by way of Review Petition, if so advised.

These Special Leave Petition are disposed of with liberty to the petitioner to approach the High Court by way of Review Petition. If the Review

Petition is decided against the petitioner, it will be open to the petitioner to challenge the said decision as well as the impugned judgment by

way of Special Leave petition before this Court.

Pending applications, if any, stand disposed of.”

4. Mr. Rawal, Id. Counsel for the Defendant No.2 submits that owing to the liberty given by the Supreme Court, the present review petition has been

preferred. He submits that the only point that he wishes to urge in the review is that the order dated 8th January, 2019 was challenged by the

Petitioner/Plaintiff (hereinafter “Plaintiff”) before this Court in a belated manner. To support the said plea, he relies upon the orders dated 8th

January, 2019, 30th January, 2019, 2nd February, 2019, 11th March, 2019 and 12th April, 2019 passed by the Trial Court wherein, according to him,

the proceedings in the application under Section 45 of the Indian Evidence Act, were passed by the trial court. He submits that the presence of the

Plaintiff in person/through his Counsel is duly noted in the said orders. On the strength of these orders, it is his submission that the Plaintiff was fully

aware of the application filed by the Defendant No.2 seeking permission to lead the evidence of an handwriting expert. The said application was

allowed by the Trial Court vide order dated 8th January, 2019. The handwriting expert had also lifted the specimen signatures from the documents on

8th February, 2019 and the report of the handwriting expert was also filed on 12th April, 2019 with the Trial Court. However, in this process from 8th

January, 2019 to 12th April 2019, no objection was ever raised by the Plaintiff.

The Plaintiff deliberately chose to challenge the original order of 8th

January, 2019 only after the handwriting expert's report was taken on record by the Trial Court.

5. According to him, it is this belated challenge to the order dated 8th January, 2019 on Plaintiff's part which deserves to be considered by this

Court which has not been considered by the Court while passing the order dated 11th September, 2019. He further submits that now that the

handwriting expert's report is on record, since the Plaintiff and Defendant No.2 are claiming rights through the same seller, Defendant No.1, the

report of the handwriting expert ought to be taken on record in order to adjudicate the issues which have been raised in the suit.

6. Mr. Shankar Vaidyalingam, Id. Counsel appearing for the Plaintiff submits that the Defendant No.2 has misled the Supreme Court by falsely

submitting that the Plaintiff herein moved to the High Court at a belated stage and in particular after the report of the handwriting expert was filed

before the Trial Court. The present petition challenging the order dated 8th January, 2019 was in fact lodged on 12th April, 2019, the very same day

report of the handwriting expert was filed before the trial court but before the report was taken on record by the Trial Court. He submits that the

petition was lodged in the High Court by the plaintiff immediately after obtaining taking caveat clearance report from the High Court Registry on 12th

April, 2019 at 12:26 p.m. itself which is prior to the matter being taken up before the Trial Court as at the time of lodging of the petition the Plaintiff

had no knowledge of the report of the handwriting expert having been filed. He however does not dispute that the Petitioner did reasonably expect

that the report would be filed before the trial court on the said date. In any event, the present petition was preferred by the Plaintiff within a period of

three months and cannot be held to be belated as the Petitioner had to apply for the certified copy and only upon receiving the certified copy, the

petition was duly prepared by the Id. Counsels and filed on 12th April, 2019.

7. He further submits that the suit is one for specific performance filed by the Plaintiff and the Defendant No.2 was impleaded in the suit vide order

dated 24th April, 1990. The Defendant No.2 had sufficient time to lead the evidence in respect of the signature of the seller. The belated manner in

which the application was moved under Section 45 of the Evidence Act, 1872 for

adducing the evidence of a handwriting expert is only a method on part of the Defendant No.2 to delay the adjudication of the suit. The application having been filed almost 30 years after Defendant No.2 was impleaded itself shows that the same does not deserve to be allowed. Moreover, the Plaintiff's evidence has also concluded. If handwriting expert's evidence is now taken on record, it would cause enormous injustice to the Plaintiff.

8. The Court has heard the Id. Counsels for the parties and perused the record.

9. The order of the Supreme Court dated 13th November, 2019 records the submission of the Defendant No.2 i.e., the Review Applicant that the

Plaintiff moved the High Court in this petition at a belated stage and after the report of the handwriting expert was received. It is on the basis of this

submission that liberty was sought before the Supreme Court to the Defendant No.2 for filing of the present review petition. For the purpose of

appreciating the question as to whether the Petition filed by the Plaintiff before this Court was belated or not, it would be relevant to record that on 8th

January, 2019, the order was passed by the Trial Court in the application moved by the Defendant No.2 under Section 45 of the Evidence Act, 1872

and costs of Rs.3,000/- were imposed on the Defendant No.2. The said order reads as under:

“Vide my separate order of even date, the application u/s 45 of Evidence Act of the defendant no. 2 is allowed subject to cost of Rs.

3000/- to be deposited in DLSA. It is made clear that defendant no. 2 will be given only 30 days time from today to complete the entire

process of examining the hand writing expert i.e. taking photographs of admitted and disputed signatures and examining the witness.

Let the matter be put up for further proceedings on 07.02.2019.”

10. Thus, the entire process of examining the handwriting expert was to be concluded within 30 days i.e., by first week of February 2020. However,

on 29th January 2019, an application was moved by the Defendant No.2 praying that a specific date and time be fixed for lifting of the signatures on

the documents by the handwriting expert. The prayer in the said application is as under:

“It is therefore respectfully prayed that this Hon'ble Court be pleased to permit the applicant to take photographs of the disputed and

admitted signatures of deceased Defendant no. 1, Shri Vidya Sagar Bhagat to enable said expert namely Shri Deepak Jain to form and

render his opinion to place on record his expert opinion. Further this Ld. Court be pleased to fix date and time subject to convenience of

this Ld. Court for conducting above process of taking the photographs; It is prayed accordingly.â??

11. The affidavit in support of this application was attested on 29th January, 2019 and the Trial Court directed the same to be put up on 30th January,

2019. On 30th January, 2019 the Trial Court issued notice in that application and listed the matter for 2nd February, 2019. On 2nd February, 2019, the

following order was passed:

â??Notice of the application u/s 151 CPC of defendant no.2, not sent to the defendant no.1. Counsel for defendant no. 2 submits that the

date and time for lifting the signatures by the Hand Writing Expert be fixed and he undertakes at Bar to inform the counsel for defendant

no.1 (Sh. J.K. Bhola) regarding the said date and time. Counsel for defendant no.2 is directed to do the needful. In the meantime, notice of

the application u/s 151 CPC of the defendant no.2 be sent to the defendant no.1 on filing of PF/RC, for 08.02.2019 at 2:00 PM.

Counsel for plaintiff seeks time to file the reply to the application u/s 151 CPC of the defendant no. 2. This application has been filed by

defendant no. 2 only to fix the time and date for lifting the disputed and admitted signatures regarding which the application for

examination of Hand Writing Expert has already been allowed. Hence, this application u/s 151 CPC is only procedural formality for lifting

the signatures from the judicial record by the Hand Writing Expert. Thus, no reply is required on this application.

All parties and their counsels may remain present at the time of lifting the signatures by the Hand Writing Expert. The date and time for

lifting the signatures is fixed, on 08.02.2019 at 2:00 PM.â??

12. From the above chronology, it is clear that it is almost when the 30 days period as fixed by the order dated 8th January, 2019 was expiring that the

Defendant No.2 chose to file an application for lifting of the signatures for the purpose of examination by the handwriting expert and the Trial Court

fixed the date for lifting of the signatures on 8th February, 2019. Both the parties

were given the liberty to remain present at the time of the lifting of the signature. The signatures are stated to have been lifted on the said date.

On 11th March, 2019, two weeksâ?? further time was sought by the Defendant No.2 from the Trial Court to file the report of the hand writing

expert. The matter was then taken up on 12th April, 2019, on which date, the following order was passed:

Pass over for 12:30 PM sought on behalf of defendant no. 2 on the ground that main counsel will be available at 12:30 PM. Plaintiff

submits that he is a Doctor by profession and have some official appointment, therefore, he has to rush. The plaintiff is at liberty to leave.

At request on behalf of defendant no. 2, put up at 12:30 PM.

At 12:30 PM

â??Proxy counsel for defendant no. 2 again submits that main counsel is still busy in other court. She has filed the affidavit in evidence of

Hand Writing Expert namely Deepak Jain alongwith the original report of Hand Writing Expert. Copy supplied to LRs of deceased

defendant no. 1 today in court. Spare copy of the same for plaintiff is kept on record. Plaintiff may take the same from the Ahlmad against

the proper receipt.

At request on behalf of defendant no. 2, put up for DE on 10.05.2019 at 11:30 AM.â??

13. Perusal of the record shows that from the passing of the order dated 8th January, 2019 allowing the evidence of handwriting expert, till 12th April,

2019 when the petition was filed before the High Court, the entire delay is on part of the Defendant No.2 who was initially given 30 days to complete

the process of the report of the handwriting expert but approximately three months elapsed in that process.

14. The Plaintiff lodged this petition on 12th April, 2019 as is clear from the record. On the said date, in the morning, a passover was sought by the

Review Applicant itself and the matter was passed over to 12:30 p.m. It is at 12:30 p.m. that the report of the handwriting expert was tendered before

the Trial Court as is evident from the order dated 12th April 2019 passed by the Trial Court. By that time, the petition had actually stood lodged before

the High Court which is evident from the record. Thus, the stand of the Review Applicant that the petition was filed after the report was tendered

before the Trial Court is contrary to the record.

15. Coming to the second submission of the Defendant No.2 that the petition was filed in a belated manner "initially vide order dated 8th January, 2019, gave 30 days' time to Defendant No.2 to conclude the entire process of examining the handwriting expert, i.e., taking photograph of the admitted and disputed signature and examining the witness. However, as is clear from the chronology of events set out above, the said process was further delayed by the Defendant No.2 by almost a period of three months. During this process, the Petitioner appears to have applied for a certified copy of the order dated 8th January, 2019 which was released to the Petitioner on 8th February, 2019. Thereafter, steps are stated to have been taken by the Petitioner for filing of the petition.

16. The petition challenges the order dated 8th January, 2019 on merits i.e., to the effect that after more than 30 years, when the evidence of all the parties has been closed and the matter is listed for final arguments, the evidence is sought to be reopened by the Defendant No.2 by filing of an application under Section 45 of the Evidence Act. This is a substantive argument on behalf of the Petitioner. Even if it is presumed that the petition was filed by the Plaintiff on 12th April 2019 after obtaining a certified copy, on 8th February, 2019, this Court is of the opinion that the same cannot be held to be belated filing considering the fact that Defendant No.2 was itself not moving with alacrity in respect of the handwriting expert's report. Thus, this Court is of the opinion that the filing of this petition cannot be held to be belated by any standard inasmuch as the same was clearly filed within the period of three months after the passing of the impugned order.

17. Moreover, in the present case, as noticed in the main order dated 11th September, 2019, the suit relates to a prime property in South Delhi being D-15, Mansarovar Garden, New Delhi ad measuring 297 sq. yards. The Plaintiff has filed a suit for specific performance based on an agreement to sell dated 27th December, 1987 in which reliance is placed on receipt dated 2nd March, 1988 which is being disputed by the Defendant No.2. This document was on record of the suit since inception. The Defendant No.2 - Review Applicant having been impleaded on 24th April, 1990, the filing of an application in 2019 i.e., after 29 years, cannot be said to be bona fide conduct. If the report of the handwriting expert is taken on record at this

stage, the evidence would have to be reopened as the Plaintiff will need an opportunity to rebut the same. Cross examination of the experts will ensue.

The final adjudication will be further delayed. The Defendant No.2's intention obviously seems to be to delay the final adjudication of the suit.

18. In view of the above, the Court is of the opinion that the review application is bereft of merits and is accordingly dismissed along with all pending applications.

19. Since the passing of the order dated 11th September, 2019, more than 2 years have passed. Accordingly, the Trial Court is directed to adjudicate the suit on or before 30th May, 2022.

20. No unnecessary adjournments shall be granted to the parties. Matter is fixed for 17th January, 2022. If physical court does not resume, the arguments shall be heard by the Trial Court through video conferencing.