

(2016) 04 CAL CK 0116
In the Calcutta High Court
Case No : C.O. No. 1455 of 2015.

Joydeb Dutta - Petitioner @HASH Atin Law - Opposite Party

Date of Decision : 20-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10A, Order 26 Rule 10A (1),
Section 151

Citation : (2016) 3 CalLJ 382 : (2017) 1 ICC 446 : (2016) 5 WBLR 534

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Swapan Kumar Mullick, Mr. Supratim Laha and Ms. Soma Roy,
Learned Advocates, for the Petitioner; Mr. Abhijit Roy, Learned Advocate, for the
Opposite Party

Final Decision : Disposed Off

Judgement

Samapti Chatterjee, J. - The petitioner has filed the present revisional application assailing the order no. 41 dated 16th April, 2015 passed by the Learned Judge, 10th Bench, City Civil Court, Calcutta in Money Suit No.609 of 2009 thereby rejecting the petitioner's application under Order 26, Rule 10A (1) read with Section 151 of the Civil Procedure Code for appointment of handwriting expert.

2. The brief case of the petitioner is as follows :

That the opposite party in the year 2009 filed a suit against the petitioner before the Learned 3rd Bench, City Civil Court at Calcutta under provision of Order 37 of the Civil Procedure Code registered as Money Suit No.609 of 2009 for reliefs interaila for a decree of principle amount of Rs. 1,99,000/- as per statement of account.

It was alleged in the suit that the plaintiff/opposite party has given a loan for sum of Rs. 2,00,000/- to the petitioner with the understanding to repay the said amount within 15 months at a monthly instalment of Rs. 13,333.33 paise.

It was further alleged that the petitioner made a sum of Rs. 1000/- only on 29th August, 2006 after repeated demand by the plaintiff/opposite party. Against the

said Money Suit the petitioner submitted their written statement denying all the allegations.

It was also mentioned in the written statement to save limitation the plaintiff/opposite party made up a cock and bull story just before the expiry of original period of limitation i.e. on 30th September, 2006. Both the parties adduced evidence in the said suit. Sometime in November, 2011 the petitioner took out an application under Order 26, Rule 10 A (1) read with Section 151 of the Code of Civil Procedure, 1908 for appointment of a handwriting expert. The relief sought for in the said application is quoted below :

"Under the aforesaid facts your petitioner most humbly prays before your Honour for an order appointing a Handwriting Expert to peruse the sample handwriting and signature of the petitioner that with the handwriting and signature appearing in the alleged admission of debt allegedly made by the petitioner on 29th August 2006 of payment of sum of Rs.1000/- and undertaking to pay a sum of Rs. 1,99,000/- in the Annexure produced by the Plaintiff with the Plaint and file a Report before this Ld. Court on such terms so as to this Ld. Court may deem fit and proper and pass such further or other order/(s) and/or direction/(s) as may deem fit."

The plaintiff/opposite party used their written objection against that application under Order 26, Rule 10A (1). The petitioner earlier approached before this Hon"ble Court by filing a civil revision application being C.O No. 4086 of 2011. That application was disposed of by this Hon"ble Court on 19th December, 2011 holding interalia as follows :-

"In my view, the order impugned does not merit interference at this stage, for the application of the petitioner has not been rejected by the learned trial judge. However, it is clarified that if on hearing arguments of the parties the learned trial judge is of the view that the application for appointment of n expert does not merit an order being passed in terms of the prayer made therein, he shall immediately pass an order to that effect so as to enable the petitioner to question its correctness before the appropriate forum. In such case, final decision on the suit shall not be rendered before expiry of ten days from date such order is passed. On the contrary, if the learned trial judge is of the view that the suit itself ought to be dismissed without appointing an expert on the basis of his own assessment of the disputed signature, he shall be free to decide the suit in accordance with law and in the process hall also dispose of the application without passing any order thereon."

Thereafter vide impugned order no.41 dated 16th April, 2015 the said application under Order 26, Rule 10A (1) was rejected by the Learned 10th Bench City Civil Court, Calcutta with the following observations :

"Section 73 of the Evidence Act has conferred power upon the Court to compare the disputed signature with the admitted signature in order to ascertain whether the disputed signature is genuine, or not.

If it is proved to the satisfaction of the Court, then there is no necessity for taking help of an expert as per provision of Section 45 of the Evidence Act. In that case, there is no necessity to send the disputed signature to an expert under Order 26, Rule 10A of the C.P.C. So, let us see as to whether the disputed signature dated 29.08.2006 appearing on Exbt.-1 is a genuine signature of the Defendant, or a forged signature. We have already found that the signature appearing on the Revenue Stamp on Exbt.-1 is the admitted signature of the Defendant. The Defendant in his Written Statement at para 2 & copy;, page 6 has specifically stated that the signature appearing in the forged part which resembles that of the Defendant is not his signature. So, the Defendant has admitted that there is similarity in the signature appearing on the left side bottom dated 29.08.2006 on Exbt-1 with his admitted signature appearing on the Revenue Stamp on Exbt.-1. Curiously enough, the Defendant in his Written Statement, as well as in his Affidavit-in-Chief has stated about the resembles of the signature, but did not state anything about the dissimilarities. The Defendant did not explain as to the strokes and curves of the disputed signature, which are found not similar to his admitted signature. On the other hand, I clearly find that the stroke and curve of "J" and "D" of the signature of the Defendant Joydeb Dutta in the disputed signature are similar to the admitted signature appearing on the Revenue Stamp."

Hence, the present writ petition.

3. Mr. Swapan Kumar Mullick, learned Advocate appearing for the petitioner submitted that just to safe the point of limitation to file the said Money Suit the plaintiff/opposite party has relied on the document whether the veracity of the signature and the contains of the said document has been challenged and disputed by the petitioner therefore, the petitioner/defendant filed that application for appointment of handwriting expert to examine the said disputed signature appeared in the said document.

4. Mr. Mullick further contended that the Learned Judge erred in law by not appointing the handwriting expert to examine veracity of the disputed signature appeared in the said document.

5. Mr. Mullick further vehemently urged that the Learned Judge has acted material irregularities in not considering the fact that the opinion of a handwriting expert is admissible as evidence should be tested on the basis of the facts and circumstances of each case.

6. Mr. Mullick further vehemently argued that the petitioner/defendant has challenged the contains as well as the signature of the said document which has not been examined by appointing a handwriting expert. Therefore, in conclusion Mr. Mullick contended that the impugned order should be set aside by allowing the present revisional application.

7. Per contra, Mr. Abhijit Roy submitted that the Exbt-1 is the disputed document but the petitioner/defendant never disputed that document. On the other hand

the petitioner accepted that document in his affidavit-in-chief. Therefore, Mr. Roy contended that there is no necessity to automatically allow the petitioner's application for appointment of handwriting expert to examine the said document. In support of his contention Mr. Roy relied on a decision reported in AIR 2003 (Supreme Court) Page-4548 (R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P Temple and another) Paragraph 19 which is quoted below :

"Para-19-Order 13, R.4 of the C.P.C provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initiated by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the later case, the document may be returned by the Court to the person from whose custody it was produced."

Mr. Roy also relied on a decision reported in 2014 (4) CHN (Cal) (Sandhya Rani Das v. Parikshit Das) Page 153 on the same issue.

8. Mr. Roy further vehemently urged that a person has to raise objection at initial stage whether a document is a genuine or forged or fabricated one. This objection should have been raised at the initial stage not at the belated stage but the present case in hand the document for which the petitioner has filed the application for appointment of handwriting expert was initially admitted without any objection raised by the petitioner. In support of his contention Mr. Roy relied on a Hon"ble Supreme Court decision reported in 2001 (3) SCC Page 1 (Bipin Shantilal Panchal v. State of Gujarat and another) Paragraph-13 and 14.

Mr Roy also relied on a Hon"ble Supreme Court decision reported in AIR 2003 Supreme Court Cases Page-3109 (Ramabai Padmakar Patil (dead) by LRs and others v. Rukminibai Vishnu Vekhande and others) Paragraph-9.

9. In conclusion Mr. Roy submitted that there is no infirmity in the order impugned which deserves interference by this Hon"ble Court.

10. Considering the submission advanced by the learned Advocates appearing for the parties and after perusing the record and the Judgments cited by Mr. Roy I find that the Learned Judge observed as follows :-

"The Defendant in his Written Statement at para 2(c), page-6 has specifically stated that the signature appearing in the forged part which resembles that of the Defendant is not his signature. So, the Defendant has admitted that there is similarity in the signature appearing on the left side bottom dated 29.08.2006 on Exbt.-1. Curiously enough, the Defendant in his Written Statement, as well as in his Affidavit-in-Chief has stated about the resemblance of the signature, but did not state anything about the dissimilarities."

11. Now I have to deal with the Hon''ble Supreme Court decisions relied on by Mr. Roy.

In respect of decision Ramabai Padmakar Patil (dead) (supra) I find that in the said case the attesting witnesses were examined to prove the will. Only the examination of typist who transcribed the will was turned down on the ground that the said typist was neither attesting witness nor the testator.

In respect of Bipin Shantilal Panchal (supra) case the Hon''ble Court held that if any objection is raised at the time of evidence collecting stage regarding admissibility of any material in evidence, Court should record the objection in the order and consider the same at the time of passing the final order.

In respect of R.V.E Venkatachala Gounder case (supra) the Hon''ble Supreme Court observed in respect of Order 13, Rule 4 of the C.P.C that at the time of observing that objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion.

12. I find that in the written statement at Para 2 (c) page-6 the petitioner stated that forged part which resembles by the petitioner's handwriting is not his signature. That does not mean that the defendant/petitioner admitted his signature though it is evident from the record that every time petitioner disputed the signature as well as the contains . Therefore, it was the duty of the Learned Court below to appoint a handwriting expert to examine the disputed signature of the petitioner. It is admitted that the Court has power to compare but it is safe if it is sent to the expert because Court should not usurp of an expert.

13. Considering the above discussion I am of the view that the impugned decision dated 16th April, 2015 passed by the Learned Judge, 10th Bench, City Civil Court, Calcutta in Money Suit No. 609 of 2009 cannot be sustained. Therefore, Order No.41 dated 16th April, 2015 passed in Money Suit No. 609 of 2009 by the Learned Judge, 10th Bench, City Civil Court , Calcutta thereby rejecting the objection under Order 26, Rule 10 A (1) read with Section 151 of the Civil Procedure Code is hereby quashed and set aside.

14. I direct the Learned Judge, 10th Bench, City Civil Court to revisit the said application under Order 26, Rule 10A (1) of the Civil Procedure Code for appointment of handwriting expert in accordance with law after giving an opportunity of hearing to the parties and dispose of the same within 10 days from the date of communication of this order, till the disposal of the said application by the Learned Judge, no final order shall be passed in the said Money Suit No. 609 of 2009.

15. With this direction this revisional application is disposed of without any order as to costs.

16. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.