

(2018) 05 DEL CK 0427

In the Delhi High Court

Case No : CM(M) 659 OF 2018 and CM APPL.23235-23236 OF 2018

M/S RANCHI CATHOLIC ARCHDIOCESE & ORS.

APPELLANT

Vs

CHANDRA JYOTI BOOK PUBLISHER & DISTRIBUTORS

RESPONDENT

Date of Decision : 29-05-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 45
Code of Civil Procedure, 1908 — Section 151

Citation : (2018) 05 DEL CK 0427

Hon'ble Judges : R.K. Gauba, J

Bench : Single Bench

Advocate : Abhik Kumar, Rinku Mathur

Final Decision : Dismissed

Judgement

1. The petitioners are first, second and fourth defendants jointly contesting the civil suit (CS No.199/2017), the third defendant also connected with the

first petitioner having died the proceedings against him having since abated. The suit was instituted in March, 2003 seeking, inter alia, recovery of

Rs.70,63,785/- against goods (books) supplied statedly pursuant to an agreement dated 05.04.1988 executed by the deceased defendant. The suit is

being contested by the petitioners, inter alia, on the averments that the document described as agreement dated 05.04.1988 and connected documents

described as receipts are forged and fabricated. The case was initially presented on the original side of this court but stood transferred to the district

court on account of change of pecuniary jurisdiction.

2. When the case was still at the stage of plaintiff's evidence, the respondent (the plaintiff) had moved an application (IA No.1130/2012) on which

it was permitted, by order dated 15.02.2013, to engage a handwriting expert to

secure opinion about the questioned documents and adduce, in evidence, the opinion of such expert. The plaintiff led evidence, inter alia, also examining the said expert Mr. Deepak Jain (PW-2) who was subjected to cross-examination by the petitioners.

3. When the case reached the stage of defendant's evidence, the petitioners moved an application under Section 45 of the Evidence Act read with Section 151 of the Code of Civil Procedure, 1908 (CPC) praying for the questioned documents, viz., agreement (Ex.PW-1/1), invoices (Ex.PW-1/2-5), hundis (Ex.PW-1/6-9) and letters (Ex.PW1/10-16) to be sent to Central Forensic Science Laboratory (CFSL) for eliciting its opinion as to the genuineness of the signatures purportedly of the third and fourth defendants appearing thereupon. The additional district Judge has rejected the said prayer by order dated 16.05.2018 which is impugned by the petition at hand.

4. Having heard the counsel for the petitioner and having gone through the record, this court finds no error or infirmity in the impugned order. As noted earlier, the suit primarily for recovery of money was filed in March, 2003. The plaintiff had referred to the documents in question and had brought the same on record at the very inception of the proceedings. The petitioners while contesting it, took the plea that the said documents were forged and fabricated, thereby giving rise to a question of fact. They have been well aware all along that the trial court will have to address the issue as to whether the documents in question bear the signatures of third and fourth defendant or not. The plaintiffs by moving the application (IA No.1130/2012) had made it clear that it would rely upon the opinion of a handwriting expert. If there was a need for the defendant of the suit to also obtain independent opinion on the same set of documents, appropriate steps could have been taken at the same time. The petitioners (defendants) did not feel the necessity to initiate any such action for another expert opinion to be obtained by them. They contested the opinion of PW-2, who had been engaged as the expert by the plaintiff, by subjecting him to cross-examination. There is no explanation worth the name as to why, if there was any such need, no steps were taken for obtaining another opinion as to the genuineness of the questioned documents at an earlier point of time. The move was made highly belatedly when the case has reached the final stages.

5. There is no special reason set out either in the application moved before the

trial court, or in the petition at hand, as to why the petitioners were not able to engage a private handwriting expert on their own to secure such fresh opinion. The CFSL is a government agency which generally does not take up the responsibilities of testing the genuineness of documents or giving opinion as to the authorship in private litigation, what with the extraordinary load that it bears vis-À vis the requisitions for opinion received from crime investigation agencies of the State.

6. This court, in the above-noted circumstances, endorses the observation of the trial judge that the design in moving this application at this stage so

late in the day with such prayer is primarily to delay the adjudication even further.

7. Thus, the petition and the applications filed therewith stand dismissed in limine with costs of Rs.10,000/- to be deposited with Delhi High Court

Legal Services Committee within a week.