
(2011) 01 CAL CK 0091
In the Calcutta High Court
Case No : C.O. No. 2482 of 2010

Ranajit Ghosh and Others

APPELLANT

Vs

Gan Tusi Au and Others

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Evidence Act, 1872 — Section 45, 73

West Bengal Premises Tenancy Act, 1956 — Section 17(2), 17(2A)

Citation : (2011) 1 CALLT 654

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : B.K. Banerjee, Shila Sarkar and Arnab Roy, for the Appellant; Gopal Chandra Ghosh, for the Respondent

Judgement

Prasenjit Mandal, J.—This application is at the instance of the Defendant Nos. 2(a) to 2(e) and is directed against the order No. 87 dated May 27, 2010 passed by the learned Additional Civil Judge(Senior Division), Sealdah in Title Suit No. 163 of 2001 thereby rejecting an application u/s 45 of the Indian Evidence Act filed by the Defendants.

2. The Plaintiff/opposite party herein instituted a title suit being Title Suit No. 270 of 1990 against the predecessor-in-interest of the Petitioners and the opposite party Nos. 2 & 3 for eviction from the premises in suit, as described in the schedule of the plaint. In that suit, the Petitioners appeared and filed an application u/s 17(2) & (2A) of the West Bengal Premises Tenancy Act, 1956. While the Plaintiff /opposite party was deposing before the Court, a letter was shown to him during cross-examination and she (witness) denied her signature thereon. For that reason, the Petitioners filed an application u/s 45 of the Indian Evidence Act and such application was rejected on contest by the impugned order. Being aggrieved, this application has been preferred.

3. Mr. Bidyut Kumar Banerjee, learned senior Advocate appearing on behalf of the Petitioners, submits that the Defendant No. 1 was never a tenant under the

Plaintiff in respect of the suit premises. The predecessor-in-interest of the Petitioners and the opposite party No. 3 were inducted as tenants by one Appolo Engineering Company in respect of one room at a monthly rental of Rs. 150/- payable according to English calendar month and subsequently, the rent was enhanced to Rs. 200/- per month. During cross-examination of the Plaintiff, a letter was put to the Plaintiff for verification and the Plaintiff denied her signature on the same. So, the letter is required to be examined by a handwriting expert to have an opinion over the signature of the Plaintiff u/s 73 of the Indian Evidence Act but the learned Trial Judge has observed that the document cannot be sent to the handwriting expert as the same was not formally proved and marked exhibit. Such observations of the learned Trial Judge is not correct. He also submits that the learned Trial Judge did not consider at all the provisions of Section 73 of the Indian Evidence Act and as such, the impugned order is required to be set aside.

4. On the other hand, Mr. Ghosh, learned Advocate appearing on behalf of the opposite party, submits that the document was tendered during cross-examination and whenever it is not admitted, the Defendants are required to prove the same and so the Court has rightly rejected the application u/s 45 of the Indian Evidence Act.

5. Therefore, the question that arises for consideration is whether the impugned order should be sustained.

6. Upon hearing the learned Counsel for the parties and on perusal of the materials on record, I find that in a suit for eviction against the tenants, the application u/s 17(2) & (2A) of the said Act of 1956 filed by the Defendants was under consideration by the learned Trial Judge. The Defendants have adduced evidence in support of their application u/s 17(2) & (2A) of the 1956 Act. Thereafter, the Plaintiff was being examined as O.P.W. No. 1. At that time, a letter was tendered to the Plaintiff during cross-examination and she denied to have signed on that letter. For that reason, the application was filed.

7. No doubt, as per provisions of Order 8 Rule (1)(4) of the CPC any document may be tendered on behalf of the Defendants during cross-examination of the Plaintiff. In the instant case, the said procedure was adopted. Therefore, there is no bar to tender such document for proving the same before the Court. When the signature on the document is denied, there is other mode of proving the same by examining person who received the same or who has acquaintance with the handwriting of the writer of the letter. In the instant case, the contents of the document are not brought to light. It was tendered during the cross-examination for proving of the same. The Defendants had the opportunity to prove the same by way of marking a document as exhibit while they adduced evidence. This document had come to the Court from the custody of the Defendant and they adduced evidence before the Court earlier. They had the opportunity to prove the same, but, they did not adopt such course and they waited to tender the same during the cross-examination of the Plaintiff. So, the Defendants had taken the

risk of tendering the document during the cross-examination of the O.P.W. No. 1 and they were not successful in making the letter as exhibit. In the circumstances, I hold that the learned Trial Judge has rightly commented that "during tendering evidence on behalf of the Defendants before the learned Trial Judge, the tenants did not produce such letter for being marked as exhibit. In other words, the admissibility of the document in question was never tested before the Court by producing the same for marking exhibit after formally proving the same".

8. When the witness of the adversary refused to admit the same and if there is an assertion that it was written by that witness, the proper course would be to have an opinion of a handwriting expert provided it has been established that the document is necessary for the purpose of the suit and that it is necessary for the disposal of the application u/s 17(2) & (2A) of the 1956 Act. There is no such material. So, I am of the view that the learned Trial Judge is justified in rejecting the application for appointment of a handwriting expert.

9. The observations of the learned Trial Judge that since the document has not been marked as exhibit, it cannot be sent to the expert, cannot be supported at all.

10. During argument, Mr. Banerjee has submitted that the document could have been compared with the signature of the Plaintiff appearing on other papers as per provisions of Section 73 of the Indian Evidence Act. In this regard, I am of the view that the comparison of signature by the Court u/s 73 of the Indian Evidence Act is a discretionary power of the Court. So, the learned Trial Judge did not take any step for comparison of the signature by himself as per provisions of Section 73 of the Indian Evidence Act. The Defendants have not stated why this document is necessary with reference to the matter in controversy in the suit and there is no observation by the learned Court in this respect. So, for the purpose of the disposal of the application, I hold, that the learned Trial Judge is justified in rejecting the application u/s 45 of the Indian Evidence Act.

11. However, if it is found subsequently that the document is essential for adjudication of the matter in dispute between the parties in the suit, the Defendants are at liberty to renew their prayer for examination of the said letter by a handwriting expert u/s 45 of the Indian Evidence.

12. This application is disposed of with the observations made above.

13. Considering the circumstances, there will be no order as to costs.

14. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.