

(1985) 10 OHC CK 0002
In the Orissa High Court
Case No : Civil Revision No. 769 of 1982

Sashi Bhusan Pati and Another APPELLANT
Vs
State Bank of India and Another RESPONDENT

Date of Decision : 10-10-1985

Acts Referred:

Evidence Act, 1872 — Section 114, 73

Citation : AIR 1986 Ori 218 : (1985) 60 CLT 591 : (1985) 60 CLT 590

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : K.N. Sinha, for the Appellant; S.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The scope of Section 73 of the Evidence Act is the core question that arises for consideration in this application u/s 115, Civil P.C. By the impugned order the trial Court has allowed the application of opposite party No. 1, State Bank of India to direct the petitioners to give their handwriting and signatures in court for the purpose of comparison with disputed writings through the help of a handwriting expert.

2. The opposite party 1 filed Money Suit No. 22/80 before the Subordinate Judge, Jajpur for realisation of a sum of Rs. 40,620.75 from the petitioners and opposite party 2. The account in question stood in the name of opposite party 2. The allegations material for the purpose of the present proceeding are that petitioner 1, Sashi Bhusan Pati operated the account on several occasions and he withdrew the total sum of Rs. 34,380 unauthorisedly from the account of opposite party 2. This having been detected by the authority subsequently, the said petitioner 1, as alleged by the Bank, admitted to have so operated the accounts and further stated that petitioner 2 (defendant No. 3) received a part of the amount so withdrawn by him from the account in question.

In the written statement the petitioners took the plea that they were in no way

connected with opposite party 2 and they have not operated the account in question at any time. In short they totally denied their involvement in the affair.

3. Before commencement of hearing, an application u/s 73, Evidence Act was filed by the plaintiff, Bank praying that the petitioners be directed to give their handwriting to enable the Court to compare the same with the disputed writings. This application by order dt. 1-3-1982 was rejected by the Court on the grounds that it was premature and at the hearing of the suit it is open to the Court to take recourse to Section 73 of the Evidence Act if necessary. Thereafter another application with similar prayer was filed by the plaintiff on 27-4-1982 on which the impugned order was passed. The application was objected by the petitioner inter alia on the ground that a similar petition having been rejected earlier the subsequent application is not entertainable and that no case for taking recourse to Section 73 of the Act has been made out in the facts and circumstances of the case. As stated earlier, the application was allowed by the Court.

4. Shri K. N. Sinha, learned counsel for the petitioner contends that the subsequent application for the very same purpose is not maintainable in view of the earlier order of the Court on 1-3-82 rejecting the application and secondly that there is no express finding that to enable the Court to compare the admitted writings with the disputed ones it is necessary to issue direction to the petitioners as contemplated u/s 73 of the Evidence Act. Sri S. N. Sinha, learned counsel for the opposite party on the other hand, contends that the Court having felt the necessity for issuing the direction for proper adjudication of the case the impugned order cannot be interfered with in exercise of the revisional jurisdiction of this Court.

5. Before proceeding to consider the merits of the contentions it would be convenient to quote Section 73 of the Evidence Act :--

"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."

The language of the provision clearly shows that thereunder the Court is empowered to compare the admitted writings and signatures of the person with the disputed ones in order to ascertain whether the signature and writings in question are really by the person by whom it purports to have been written or made. The section further empowers the Court to direct any person present before it 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. The purpose of vesting such power with the Court is to enable it to properly adjudicate upon the dispute and to arrive at the truth of the matter in dispute. Interpretation of this provision has been the subject-matter of several decisions of different High Courts. In the case of M. Narayanaswami Vs. V. Yangatanna, interpreting Section 73, the Andhra Pradesh High Court held that when power is given to a Court as provided u/s 73 of the Evidence Act to compare any signature, writing or thumb impression and for that purpose, as provided u/s 45 of the Evidence Act, it can take the assistance of an expert, there is no reason why, as provided under Order 3, Rule 1, CPC, the Court cannot direct a party to appear in Court in person and give his signature, handwriting or thumb impression as the case may be, to enable the Court to compare the same with the disputed ones. The Court further observed that in case such power is not vested in the Court it would be a helpless situation if writings or signatures are not admitted by the appellant and admitted signature, handwriting or thumb impression are not available to the Court otherwise.

This Court in the case of Basudeb Patel v. Champa Patel 34 (1968) C L T 319 considering the question whether u/s 73 of the Evidence Act the Court was empowered to direct any person to give writings or signatures for the purpose of sending it to handwriting expert held that there was no legal bar for exercise of such jurisdiction by the Court if it was found necessary for proper adjudication of the matter in dispute.

In view of the principles laid down in this aforementioned decisions which I respectfully agree, there can be no doubt that in the present case the Court had jurisdiction to direct the petitioners to give their writings or signatures for the purpose of enabling the Court to compare them with the disputed writings of for sending it to a handwriting expert. Considering the contention of the learned counsel for the petitioners that the Court has not applied its mind to the question of necessity for taking recourse to procedure u/s 73, it is sufficient to indicate the portion of the impugned order which reads "that a comparison is but indispensable to a just decision of the suit, there can be no doubt "which clearly expresses the opinion of the Court. Further, the facts alleged in the pleadings indicated in the foregoing paragraphs clearly bring out the position that comparison of the disputed writings in the documents in the Bank with the admitted writings of the defendants 2 and 3 is necessary for proper adjudication of the dispute.

6. The learned counsel for the petitioners has referred to some decisions of this Court and of Gujarat High Court (1972) 2 C W R 1332 and AIR 1975 Guj 95 in support of the contention that the Court is not empowered to compel a person to give his signature or writing u/s 73 of the Evidence Act. Referring to operative portions of the impugned order he contends that the petitioners may (sic) be forced to give their signatures, writings and thumb impressions. In my opinion the apprehension is unfounded. All that the decisions referred to above point out is that there is no element of compulsion u/s 73 of the Evidence Act, a party or

any witness (sic). The only consequence of noncompliance of a direction u/s 73 is that it is open to the Court to draw a presumption u/s 114 of the Act about the disputed writings which may go against the person or party. These observations were made in connection with criminal cases where the contention was that an accused cannot be compelled to give his writing or signature under any circumstances. The contention is that form was not accepted and the position was clarified in the manner indicated above. There is no dispute over the proposition that under the provisions of Section 73 the petitioners cannot be compelled to give their signatures or writings but the consequences, as indicated in the decision discussed above are clear. There is also no substance in the contention of the learned counsel for the petitioners that by using the words "the writings and signatures of defendants 2 and 3 shall be taken in Court" the Court forced or intends to force the petitioners to give their signatures and writings.

7. In view of the discussions aforesaid, there is no merit in this revision petition. It is accordingly dismissed. There will be no order for costs.