
(1972) 09 PAT CK 0017
In the Patna High Court
Case No : Civil Revision No. 1043 of 1971

Satya Kinkar Palit

APPELLANT

Vs

Brahmdeo Sinha and Co.

RESPONDENT

Date of Decision : 12-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1973 Patna 213

Hon'ble Judges : U.N. Sinha, C.J

Bench : Single Bench

Advocate : S.C. Ghose and S.K. Mazumdar, for the Appellant; J.C. Sinha and Nagendra Nath Mukherjee, for the Respondent

Judgement

U.N. Sinha, J.—This application has been filed by the defendant of a pending suit and it is directed against an order passed by the trial Court on the 24th August, 1971, directing that a Handwriting Expert, named Mr. C.T. Sarwate, who does not live in this State, may be examined on commission, on the prayer made by the plaintiff of the suit, in order to avoid delay. The Court has directed, that, the plaintiff must bear the costs of the travelling of the defendant's lawyer, if the defendant chooses to take any lawyer to be present at the time of the examination of the Handwriting Expert. It appears that the Handwriting Expert lives in the State of Madhya Pradesh at Indore City. This Expert has already filed a report on the question of a disputed signature and the plaintiff wishes to examine the Expert on commission.

2. The learned counsel for the petitioner has argued, that, the plaintiff had filed a similar petition on the 3rd June, 1971, which had been rejected by an order passed on that day and, therefore, the order dated the 3rd June, 1971, operates as res judicata and the present order could not have been passed in law. Reliance is placed on the case of Rameshwar Singh v. Hitendra Singh, AIR 1924 PC 202 , and on the case of Satyadhyam Ghosal and Others Vs. Sm. Deorajin Debi and Another, . Sri J. C. Sinha appearing for the plaintiff-opposite party has

argued, that those two decisions are not applicable, as there cannot be any question of res judicata in any interlocutory matter and that the order passed on 3rd June, 1971, cannot be a legal bar to the passing of the impugned order.

I am of the opinion, that, the contention raised by the learned counsel for the petitioner is not valid at all. The two decisions relied upon by him are not on the point and there cannot be any doubt, that by rejecting the plaintiff's previous petition on the 3rd June, 1971, no dispute between the parties was adjudicated upon by the Court, so that the order can be relied upon as res judicata. As a matter of fact, according to the petition filed on 3rd June, 1971, the Expert was living at Indore City and at that time he was the Additional Government Examiner on questioned documents of the Government of Madhya Pradesh. It is clear, that, the trial Judge had not applied his mind to the facts and circumstances of the case, while passing the order dated the 3rd June, 1971. There is no bar to the withdrawal of that order, because the Court now thinks, that, in order to avoid delay the Expert may be examined on commission at his place. The learned counsel for the petitioner has urged, that, not only the Expert had never said that he will not come within the jurisdiction of the Court, but, on the contrary, he had sent an information, that, he may be available within the jurisdiction of the Court sometime in October, 1971. I do not think, there is any validity in this argument either: The Court could not have fixed the hearing of the case at the convenience of a witness living at Indore City, and if the court now thinks, that, in order to avoid delay the Expert may be examined at his place, I do not think this Court can interfere at all in its revisional jurisdiction. No case has been made out for interference and the civil revision is, therefore, dismissed with costs. The order of stay is vacated.