
(1996) 09 AHC CK 0093

In the Allahabad High Court

Case No : Writ Petition No. 1975 (M/s) of 1996

Vijay Bhan Singh and Ors.

APPELLANT

Vs

District Judge, Sultanpur & Ors.

RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:

Citation : (1996) 09 AHC CK 0093

Hon'ble Judges : B.K.Singh, J

Final Decision : Dismissed

Judgement

B.K. Singh, J.—Aggrieved by the order dated 5796, Passed by the civil Judge (Senior Division), Sultanpur, whereby the petitioners' application for examination of the signatures by hand writing expert has been rejected and against the order dated 10996, Passed by the Learned district Judge, Sultanpur, by which Petitioners' revision under section 115 CPC has been dismissed, the petitioners have preferred this writ petition.

2. I have heard the Learned counsel of the petitioners as well as Shri N.K. Seth who has put in appearance on behalf of the State Bank of India, the opposite Party No. 3.

3. The learned counsel of the petitioners submits that the learned Civil Judge (Senior Division) has erred materially in the exercise of his jurisdiction in rejecting the petitioners' application for examination of their alleged signatures appearing on receipts by hand writing expert. The learned counsel submits that it was wrongly observed by the learned Civil Judge (Senior Division) that after the evidence of the parties was recorded in the year 1993/94 and several other dates were given, the petitioners made no effort for examination of signatures by hand writing expert. The petitioners had all along been pursuing the application but on one ground or the other the case could not be taken up by the Court and therefore, the application remained pending. In these circumstances the ground for rejection of the application is factually incorrect. The learned counsel submits that in the interest of justice this court can even interfere in interlocutory orders

in exercise of jurisdiction under article 226 of the Constitution of India.

4. On behalf of the state Bank of India, Shri Seth has submitted that the evidence of the parties has been close. Thereafter there was no justification for the examination of the signatures appearing on the receipt for being sent to hand writing expert for opinion. The learned counsel also says that hand writing report by itself is not conclusive, it is merely an opinion whose validity the Court looks and considers at appropriate stage. It has then been submitted that in the order dated 5796 by which the application was rejected, the learned Civil Judge (Senior Division) has also recorded a statement of the learned counsel of the defendant, it is to the effect that no further evidence is to be tendered, Accordingly the case was ordered to be listed for arguments on 11 July, 1996. Instead of participating in the arguments, the petitioners preferred a revision under Section 115 CPC. Clearly it was an effort to delay the disposal of the suit. The learned counsel then says that it is not a case where quashing of the order will serve any interest of justice. The writ petition is liable to be rejected.

5. I have considered the above submissions of the learned counsel appearing for the parties. It is to be noticed that in this case the petitioners were the defendants before the Trial Court. It is for the plaintiffs to prove that the receipts bear the signature of the petitioners. The basic legal requirement putting the burden of proof on the plaintiffs has to be discharged by the plaintiffs and not by the defendants. I am, therefore, of the opinion that the defendants in this case ought not to have taken the responsibility of discharging the burden themselves which had to be established by the plaintiffs. In these circumstances the end result of the order does not appear to be incorrect. Besides, the impugned order is merely an interlocutory order whereby no material injustice has been done by the lower courts to the petitioners. The party which is unsuccessful before the trial Court has a right of appeal where all these questions can be urged and seen. I am, therefore, of the opinion that this is not a fit case for interference under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.