Court No. - 4

Case :- S.C.C. REVISION No. - 136 of 2024

Revisionist :- Smt. Sunita
Opposite Party :- Smt Parmjeet Kaur
Counsel for Revisionist :- Kushagra Singh,Namman Raj Vanshi
Counsel for Opposite Party :- Hemant Kumar

Hon'ble Ajit Kumar,J.

1. Heard Sri Namman Raj Vanshi, learned counsel for the revision applicant and Sri Hemant Kumar, learned counsel for the landlady/ respondent.

2. This S.C.C. Revision is directed against the order passed by the Judge, Small Causes namely the Additional District and Sessions Judge, Meerut rejecting misc. application filed by the tenant/ petitioner bearing paper no. 158-C2 seeking for handwriting expert opinion in respect of the disputed receipts bearing paper no. 33-C as according to the stand taken by the tenant the receipt against rent were used to be issued by the son of erstwhile landlady Harbhajan Kaur namely Sardar Devendra Singh.

3. He submits that it was Sardar Devendra Singh who used to sign the receipts in the name of Harbhajan Kaur and that was why even after the death of Harbhajan Kaur the receipts were issued in the name of Harbhajan Singh Kaur by her son Sardar Devendra Singh and this receipt was for a sum of Rs. 16,000/- taken towards rent running from 13.12.2018 to 12.04.2019.

4. According to learned counsel for the petitioner, Mr. Namman Raj Vanshi, if last receipt stands proved then the petitioner would not be in arrears of rent. It is also submitted by him that in the cross examination Sardar Devendra Singh very conveniently avoided to make statement that he used to sign the receipt as only this statement had came up thus his signatures were not on the receipts. Mr. Raj Vanshi submits that there is no dispute as to the fact that the receipts were issued in the name of Harbhajan Kaur who was the landlady. It is submitted next by Sri Raj Vanshi that the court was not justified in holding that even in the absence of handwriting expert, the Court itself could compare the signatures on the receipts to come to find answer to a complexed question whether receipts were signed by a person in the same handwriting in the name of another person. It is submitted that the signatures

are in Gurmukhi and therefore, the Court was not justified in rejecting the misc. application for handwriting expert.

5. In support of his submission, learned counsel for the petitioner has placed reliance upon the decision of Supreme Court in the case of **O. Bharathan v. K. Sudhakaran and another, (1996) 2 SCC 704** and has placed before the Court paragraph nos. 12, 15 and 18 of the said judgment which run as under:

"12. It appears that the learned Judge has decided the question of void and invalid votes on insufficient materials and evidence in the case. Majority of the witnesses denied that they have voted more than once and they have also denied their signatures in the counterfoils. Under such circumstances, the learned judge could have summoned documents containing admitted signatures for comparison by an expert and also by comparing them himself. Instead the learned judge understood the hazardous task of comparing hundreds of disputed signatures which are not having individual characteristics to set aside the election of a candidate, the appellant herein.

15. On the peculiar facts of this case, the learned Judge erred in taking upon himself the task of comparing the disputed signatures on the counterfoils without the aid of an expert or the evidence of persons conversant with the disputed signatures. Therefore, the approach made by the learned judge is not in conformity with the spirit of Section 73 of the Evidence Act. Though the rulings of this Court in State vs. Pali Ram (AIR 1979 SC 14) and Fakhruddin vs. State of Madhya Pradesh (AIR 1967 SC 326) were brought to his notice, the learned judge proceeded to compare the disputed signatures by himself and decided the issue. While doing so, the learned judge observed as follows :

"So all these witnesses are in the habit of occasionally putting their signature. Strangely enough most of the witnesses either denied their signature or expressed their inability to identify their signature. Even in the case of some well-educated persons when counterfoils containing the signatures were shown to them, they stated that they could not identify the signatures. Every reasonable prudent person would be able to identify his signature whenever the signature is shown to him. It is clear that these witnesses denied their signatures or failed to identify the signature with a definite purpose that at least one signature should not be taken as the admitted signature so as to make a comparison with the denied signature. It is also possible that the witnesses who had cast more than one vote pretended that they could not identify any of the signatures to make believe that they had not cast more than one vote. The denial of the signatures and the failure of these witnesses to identify their own signatures is to be viewed in the background of similarity of the signatures found in the various counterfoils."

18. The learned Judge in our view was not right either in brushing aside the principles laid down by this Court in AIR 1979 SC 14 (supra) on the ground that it was not a criminal case or taking upon himself the hazardous task of adjudicating upon the genuineness and authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of. Annulling the verdict of popular

will is as much a serious matter of grave concern to the society as enforcement of laws pertaining to criminal offences, if not more. Though it is the province of the expert to act as judge or jury after a scientific comparison of the disputed signatures with admitted signatures, the caution administered by this Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to be ultimately rendered. To quote it has been held in AIR 1979 SC 14 (supra) ;

"The matter can be viewed from another angle also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identify of a handwriting which forms the sheet- anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other: and the prudent course is to obtain the opinion and assistance of an expert."

6. Mr. Raj Vanshi has further placed reliance upon a judgment of this Court in **Ajay Swaroop Mehrotra v. D.N. Raina (deceased) & Others, 2008 (10) ADJ 652** in support of his submission that even while the defendant's evidence had yet taken place, his application for seeking handwriting expert in respect of disputed document could not have been rejected on the ground that it had been belatedly filed. In support of his submission, he has placed reliance upon paragraph no. 13 of the said judgment which runs asunder:

"13. In my opinion, there has been no delay whatsoever on the part of the plaintiff in moving the application. The production of an expert opinion is another form for bringing a certain kind of evidence before the Court and in my opinion the petitioner should not be shut out from producing such an expert opinion. It would have been a different matter, if the evidence had been led and the matter was ripe for hearing but that stage has not come. Evidence is still to be led and the plaintiff has filed the present application to give an opinion of an expert on the genuineness of that document."

7. Meeting the submissions advanced by learned counsel for the petitioner and defending the order passed by the court below for the reasons assigned therein, Mr. Hemant Kumar, learned counsel for the respondents vehemently urged that the petitioner having not denied the death of the landlady Harbhajan Kaur to have taken place on 27.11.2015 could not have set up any defence in respect of receipt which had been issued admittedly issued on 12.04.2019 bearing paper no. 33-C. It is submitted that the signatures of a deceased person could not have been there on the receipt itself and therefore, the receipt caste out. According to learned counsel,

Sardar Devendra Singh has rightly during the course of examination and very specifically stated that his signatures were not there on receipts. However, Mr. Hemant Kumar could not dispute this fact that the signature on all the receipts were of Harbhajan Kaur and not of Sardar Devendra Singh. It is further submitted by learned counsel for the respondent that the petitioner has been issued with the notice under Section106 of Transfer of Property Act and the court was only to see whether the petitioner was in default or not and in the event petitioner could not produce any receipt issued by a person who would have succeeded Harbhajan Kaur, he could not have set up any valid defence.

8. Having heard learned counsel for the respective parties and having perused the records, what clearly transpires from the pleadings that Harbhajan Kaur had died on 27.11.2015 as per the plaint allegation made in paragraph no. 3 of the plaint and that she was survived by the sole son namely Sardar Devendra Singh with three daughters namely the plaintiff and Smt. Ratindra Kaur and Smt. Surendra Kaur.

9. In the written statement though there is a denial to this paragraph no. 3 of the plaint but in the entire written statement there is no admission as to the date of death of Harbhajan Kaur, however, what is interesting to notice the pleadings raised in paragraph no. 18 of the written statement which runs as under:

"18. यह कि हरभजन कौर का पुत्र सरदार देवेन्द्र सिंह ही किराया लेता रहा है और किराया प्राप्ति की रसीद प्रतिवादनी के सामने सरदार देवेन्द्र सिंह खुद छपे हुए फार्म पर लिखकर प्रतिवादनी को देता रहा है। सरदार देवेन्द्र सिंह ने दिनांक- 14.01.2015 से 1500/- रूपये से किराया बढ़ाकर 1800/- रूपये कर दिया, तथा दिनांक 14.08.2015 से किराया बढ़ाकर अंकन- 2000/- रूपये प्रतिमाह कर दिया। अंकन- 2000/- रूपये में जलकर तथा ग्रहकर शामिल है सरदार देवेन्द्र सिंह ने दिनांक- 12.04.2019 तक का किराया मय जलकर व ग्रहकर प्राप्त करके प्रतिवादनी को रसीद दे रखी है।

10. From the bare perusal of aforesaid pleading it is clear that the defence taken by the tenant/ petitioner was that Sardar Devendra Singh even during lifetime of late Harbhajan Kaur, used to issue receipt, may be not under his own signatures but under the signatures of Harbhajan Kaur. The pleadings, therefore, are sufficient to their inference that it was Sardar Devendra Singh who used to sign the receipt in the name of his mother.

11. From the cross examination part, Paramjeet Kaur who had succeeded the property from late Harbhajan Kaur clearly admitted those receipts to be under the signatures of Harbhajan Kaur, which were earlier issued prior to death of Harbhajan Kaur. Sardar Devendra Singh stated that he had never signed any receipt during

his cross examination. Thus, it perbates down to as inequitable conclusion to be drawn on the basis of pleadings that the receipts were always issued with the signatures of Harbhajan Kaur. The question therefore, now arises as to whether Sardar Devendra Singh used to sign the receipts as Harbhajan Kaur and that was how he had signed the last receipt also and the petitioner, therefore, not liable to be held in arrears of rent as he was not aware as to whether Harbhajan Kaur had authorized Sardar Devendra Singh, her son to issue receipt under her signature by making her signature. All these are complex questions of fact which needed to be determined but the core issue germane to the controversy has been whether the last receipt also bore the signature of Harbhajan Kaur and if the handwriting expert gives opinion that all the signatures are with the same flow of handwriting then there would be a valid defence set up by the petitioner that he was not in arrears.

12. In the circumstances, therefore, the Court itself cannot be considered to be having the needed expertise and skill to match the signatures on various documents produced before the Court. The legal position in such matters has been discussed in the judgment cited by learned counsel for the petitioner in O. Bharathan (supra) where the question had arisen as to genuineness and authenticity of the signatures. The Court expressed the view that though there was no bar for a Judge seeing by his bare eyes to compare the disputed writing with the admitted writing even without the aid of any other evidence or any handwriting expert opinion but the Judge as a matter of prudence and caution should have asked for an handwriting expert opinion. In the present case I find that the disputed receipts which were issued in 2019 as crucial ones, that required determination as to the authenticity of signatures and thus I find it to be more appropriate for the Court to have obtained handwriting expert opinion instead of comparing the two documents by Judge's own bare eyes.

13. In the circumstances, therefore, in my considered view that the Court while examining the documents itself ought to have referred the document for handwriting expert. As far as the question of delay is concerned, since the defence evidence is yet to be led by the respondent and landlord also, there would not be any point of delay in the matter if the handwriting expert opinion is called for qua signature in question upon the disputed receipts.

14. In view of the above, I am not able to sustain the order passed by the Additional District and Sessions Judge, Court No. 17, Meerut dated 11.09.2024 rejecting the misc. application bearing

paper no. 159-C. Accordingly, the same is set aside. The matter is remitted to the trial court to pass orders upon the misc. application for handwriting expert. The handwriting expert opinion shall be obtained within a period of one month from the date of receipt of papers by the concerned handwriting expert. It is further directed that the handwriting expert should be government accredited certified or authorized/ recongnized handwriting expert. The endeavour of the court will be to send the documents to handwriting expert within a period of two weeks from the date of production of certified copy of this order. Soon after the handwriting expert opinion is obtained, as directed herein above, the endeavour of the court would be to ensure that the evidence of the parties stand concluded within a maximum period of three months. The parties are also directed to cooperate in recording their evidence. Soon after the evidence stands concluded, the trial court will proceed to conduct final hearing of the case and pass final orders within next two months' time. It is further provided that the court will not be granting any unnecessary adjournment to either of the parties.

15. With the aforesaid observations and directions, this petition stands **disposed of**.

Order Date :- 5.2.2025
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