

CS 98/19
RAJANI GOGIA Vs. ALKA SAXENA

16.07.2025

Present: Sh. M.K. Bhardwaj, Ld. Counsel for plaintiff with
plaintiff.
Sh. Onkar Nath and Sh. Vivek Singh, Ld. Counsel for
defendant.

1. Plaintiff has preferred an application U/S 45 and 73 of Indian Evidence Act (the corresponding Section being 39 and 72 of BSA 2023) r/w Section 151 CPC praying that the admitted signatures and handwriting of defendant on a document Ex. PW1/2 be sent to CFSL for examination after asking the defendant to give samples of her handwriting in Court.
2. Reply to the said application has been filed. Arguments heard.
3. In this suit, plaintiff has *inter alia* sued the defendant for a decree of specific performance of a contract Ex. PW1/2 and it is the case of the plaintiff that she has already paid an amount of Rs. 64.5 lac in total to defendant out of the agreed consideration of Rs. 72 lac.
4. Counsel for plaintiff submits that on the back side of the first page of Ex. PW1/2 (between points X1 to X1), the defendant has given in her own hand the acknowledgment of receiving Rs. 64.5 lac on different dates. Now, as per Counsel for plaintiff, defendant is denying her handwriting/acknowledgment on the said document and thus, Counsel for plaintiff wants that defendant should be asked to give sample of her own handwriting so that the truth of the matter can be decided in this case.

5. Counsel for defendant has vehemently opposed the application and he argues that the present application has been moved after closure of defence evidence at fag end of the matter. He argues that plaintiff had every opportunity to prove her case, including by seeking to send document in question to CFSL at the time of her own evidence and once she did not do so, plaintiff cannot be allowed to re-open her evidence or fill in the gaps/lacunae which has come in the evidence of plaintiff at this stage. He argues that defendant had categorically denied her aforesaid handwriting on Ex. PW1/2 and in case plaintiff wanted to test the said denial of defendant, the application should have been moved earlier. He argues that if the application is allowed, it shall cause grave prejudice to the defendant.
6. I have gone through the record and have also given thoughtful consideration to the rival arguments of the parties.
7. It is to be noted that defendant has denied her aforesaid handwriting on Ex. PW1/2 in her written statement. It is the specific case of plaintiff that an amount of Rs. 64.5 lac has already been received by defendant and the acknowledgment thereof is given by defendant in her own hand at the back of the first page of Ex. PW1/2. Even though there is some delay in moving of the present application, still, in order to fairly and conclusively decide the *lis* before this Court, it shall be relevant to conclude as to whether defendant, in her own hand, has or has not acknowledged payment of Rs. 64.5 lac on Ex. PW1/2.
8. Now, in order to prove that, the sample handwriting of defendant shall be necessary. If, defendant has stated correctly and truthfully in her written that the aforesaid handwriting on

EX. PW1/2 is not her handwriting, she can have no objection in giving her sample handwriting.

9. I may note that since defendant has been denying her handwriting in the aforesaid manner and plaintiff wants to prove the same, evidence on this point shall be necessary to adjudicate the *lis*. Once an opportunity is given to the plaintiff to prove the fact that the disputed handwriting is of the defendant, defendant shall also have an opportunity to rebut the said evidence, if any adduced by plaintiff.
10. Considering the above, in my humble opinion, the present application is liable to be allowed.
11. Accordingly, defendant is directed to appear physically in court to give her sample handwriting on next date of hearing.
12. Needless to say that she can appear in Court with her Counsel for necessary legal advice. The question as to whether the said sample handwriting is required to be sent to CFSL or not shall be decided on the next date of hearing.
13. With the said direction, application stands disposed off.
14. List on 25.08.2025. Dasti.

Aashish Gupta
DJ-01/NE/KKD/DELHI
16.07.2025