

17.02.2017

Present: Sh. Narender Thakur, proxy advocate for appellant.
Sh. D.K. Tyagi, advocate for respondent no.2.

An application of the appellant under Section 151 CPC filed on 01.09.2016 is pending for recalling of the order dated 29.01.2016. In this application, a prayer has been made that instead of Sh. Deepak Jain appointed as an expert witness on 29.01.2016, some another expert be examined. According to the contents of the application, this expert Sh. Deepak Jain has been hired by respondent no. 2 and there is apprehension that he will not give neutral report.

No reply of this application is filed by counsel for respondent no. 2.

Arguments heard on the same.

It is stated that appellant examined one expert witness in the Trial Court but the suit was dismissed and thereafter in the present appeal, he also examined one another expert witness AW-1 Sh. M.S. Mishra. Respondent also examined one witness Sh. Deepak Jain, appointed by the court. Thus, in the present appeal the reports of three handwriting/fingerprint expert are to be discussed. The ground taken in the present application are not justified and proper simply on the reason that Sh. Deepak Jain has been hired by respondent no. 2 and accordingly, he will not give the neutral report. It is incorrect fact on the part of the appellant to allege that expert Sh. Deepak Jain has not been appointed by the court because as per order dated 29.01.2016, his appointment was approved by the court itself. Prior to that both the parties were given an opportunity to give the list mentioning the names of five experts each but appellant did not give any list whereas respondent no.2 give the list mentioning the names of five experts and court appointed Sh. Deepak Jain, out of them. It is important to mention here that Sh. Deepak Jain was appointed on

29.01.2016 and he also appeared in the court personally on 19.03.2016 and also filed his affidavit of evidence on 27.05.2016. On both dates, counsel for the appellant was present and no objection was raised regarding appointment of this expert. When this expert Sh. Deepak Jain was already examined on 01.09.2016, then this application came. Sh. Deepak Jain was not cross examined by the counsel for the appellant despite the fact, the court waited for him till 12:35 p.m. and at last examined the witness and treated the cross examination as Nil. Why so much delay has been caused in moving this application after gap of about six months is not explained. The reasons given in the application that appellant has no faith in the report of expert Sh. Deepak Jain as well as his neutrality is baseless and without any substance. Accordingly, this application is hereby dismissed.

Put up this matter on 18.03.2017 for final arguments. Appellant has sufficient time to challenge this order in the High Court, if wishes.

(ASHWANI KUMAR SARPAL)
Addl.Distt Judge(NE)-01
17.02.2017