

CS DJ 7139/16
RAJNISH KAUSHIK Vs. SHRI PAL

25.04.2023

Present. None for plaintiff.

Sh. Yatinder Baisla and Ms. Divya Sani Ld.

Counsels for defendants.

This order shall dispose of an application u/s 73 of Indian Evidence Act filed on behalf of defendant. It is contended in the application that on 22.10.2018 during his cross examination, plaintiff has deposed that Jyoti Prasad was having his pen in his hand so he signed with that pen and Raju picked up pen which was lying on table of typist and appended his signature on Ex. PW1/A. The defendant took pen from typist and signed Ex. PW1/A. The defendant and Raju used same pen of typist for appending their signatures on Ex. PW1/A. That for genuineness and authenticity regarding statement of plaintiff in respect of usage of pen, it is required to be examined and verified by forensic laboratory. Further, to verify the contents and signatures of witnesses and genuineness of signatures of witnesses and contents written on the part of witnesses at page No. 3 of the said agreement be also required to be examined through the forensic laboratory. That the case is based upon loan agreement dated 22.4.20215 and therefore, verification of these documents is very important. Hence, this application is filed.

2. This application is orally opposed on behalf of plaintiff arguing that the application be dismissed as it is filed only to delay the proceedings. It is submitted that defendant is

delaying the matter on one pretext or other. The application is without any basis and there is no need to send the documents for any analysis. It is also submitted that the application be dismissed with cost.

3. On behalf of applicant/defendant, it is submitted that Forensic evidence shall bring out the falsity of the case of plaintiff. It is submitted specimen signature of plaintiff may be directed to be given and both can be sent for verification. \

4. I have heard both the parties and perused the record.

5. In the present application, applicant has sought three aspects, firstly, for verification and genuineness of signature of witnesses over the agreement in question. Secondly, as to how many pen were used for signing of the parties to the deed. Thirdly, whether contents of the agreement were written by plaintiff or by witness or by some other person by using same pen deposed by plaintiff in cross examination.

6. First of all in the present matter, both the parties are litigating their private rights between themselves. It is matter of common knowledge that like all other Government departments, FSL is over worked. In this scenario, there is no occasion to add to that burden by sending documents for examination in a matter wherein the parties are litigating their private rights.

7. Further, for forensic/expert examination, applicant needs to establish requirements for the same. In his application, it is contended by applicant/plaintiff that forensic examination is

necessary to verify genuineness and authenticity of the statement of plaintiff. The genuineness and authenticity of statement of plaintiff is to be assessed from material on record and not by forensic evidence in respect of signatures. In his written statement, in para no.1 defendant has stated that relying upon plaintiff left/handed over, signed documents i.e. loan agreement dated 22.4.2015 to plaintiff under impression that plaintiff will arrange for loan as agreed. There is no pleading to the effect that on the said document, witnesses have signed later on and that too using a different pen. It is trite law that evidence on facts beyond pleadings cannot be lead. Thus, seeking forensic analysis of document to this end, would amount to permitting evidence beyond pleadings. Hence, these submissions/ request cannot be approved it.

8. In view of above discussion, application u/s 73 of Indian Evidence Act filed on behalf of defendant is hereby dismissed. Previous cost, if any if not paid, be paid.

Put up **25.8.2023** for PE.

CHANDER JIT SINGH
ADJ-05, SOUTH SAKET COURTS
NEW DELHI/25.04.2023