

RCS 4/2017
Namdeo Vs. Atish

ORDER BELOW EXHIBIT 92
(Passed on this 4th day of March,2022)

1. Present application is preferred by the defendant for appointment of handwriting expert and call opinion about signature of plaintiff on document below exhibit 91.
2. Learned advocate Mulmule for the defendant argued that, the plaintiff have dispute in respect of his signature over agreement below exhibit 91. However the plaintiff have denied his signature on agreement below exhibit 91, therefore it is necessary to identify signature of the plaintiff through scientific investigation of the handwriting expert. He placed his reliance upon Shyam Sundar Chowkani Vs Kajalkanti Biswas, AIR 1999 Gau 101, Janachaitanya Housing Ltd vs Divya Financiers, AIR 2008 AP 163, and Jalagadugula Eswaro Rao Vs Davalas Surya Rao AIR 2011 AP 78.
3. On the other hand learned advocate Paliwal for the plaintiff argued that, the defendant is trying filling lacuna of defence. The plaintiff have denied specifically handwriting on said document below exhibit 91. Handwriting expert cannot be call unless both parties agreed the same and until any ambiguity arise in respect of document. The defendant is trying to collect evidence which is impemissible in the eyes of law. No purpose would serve by calling expert opinion, even if allowed. Subject matter is sale deed below exhibit 53, but agreement below exhibit 91 is not subject matter. Parties cannot seek assistance of Court to feel up lacuna.

4. Before going to discuss it is apt to see judgments relied by the defendant, In Shyam Sundar Chowkiwani (cited supra) hon'ble Guahati High Court held that, it is not safe for Court to compare signature of its own, if expert have not expresses certain opinion due to unclarity or ambiguity. In Janachaitanya Housing Ltd (cited Supra) hon'ble High Court Andhara Pradesh held that, no time is fixed to call expert opinion under section 45 of Evidence Act, if signature or writting is disputed. In Jalgadugulla Eswara Rao (cited Supra) hon'ble High Court Andhra Pradesh observed that, doors of the trial Court should not be close at the stage of evidence and reasonable opportunity be give to party to adduce evidence.

5. Now i perused the documents below exhibit 91, it shows that, in which both parties to agreement have signed it, but the plaintiff have denied his signature on that agreement exhibit 91. However the defendant has contended that the plaintiff have signed that, document. In the present case agreement below exhibit 91 is not subject matter, but the defenant have adduced it in his defendant.

6. Thretherefore I gone through pleadig of defendant, in para number 08, the defendant hava taken specific plea about execution of disputed agreement. In such circumstances, the defendnat have no alternate source to prove execution of disputed agreement, if the plaintiff have denied it. If facts are warrented and so demands confrontation of it, then the defendant is entitle to call expert opinion. Admissibility of expert of opinion can be questioned but doors cannot be shut down at this stage. Thretherefore I am of view that, present application is deserved to be allow with certain directions. Hence I proceeds to pass following order:-

ORDER

1. Application is allowed.
2. Both parties are directed to suggest and communicate a name of any handwriting expert by their mutual understanding on next date.
3. Defendant shall bear whole cost of handwriting expert fee.
4. If both parties failed to communicate mutually name of handwriting expert, then this Court will refer own its motion.
5. Separate order will pass for issuing direction to handwriting expert after communication name of handwriting expert by both parties or as per clause 4 of this order.

Parseoni
Date:04/03/2022

(O. J. Kulkarni)
Civil Judge, Jr. Division
Parseoni