



**IN THE COURT OF LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU. (CCH-90)**

Present: **Sri.K.M.RAJENDRA KUMAR., LLM, M.Phil,**
LXXXIX Addl.City Civil &
Sessions Judge, Bengaluru.

DATED THIS THE 6th DAY OF JANUARY 2025

Com.O.S.No.188/2019

PLAINTIFF : M/s.Krishna Flour Mills
(Bangalore) Private Limited,
Regd.Office and Mills at No.19,
Platform Road,
Bangalore-560 020.
R/by its Personnel Officer,
Mr.Prashanth.T.H,
Aged about 45 years,
S/o Late T.C.Halappa.

(By Sri.Mithun.G.A-Advocate)

V/s.

DEFENDANTS : 1. M/s.Snehamayi Mahila Seva
Enterprises,
Office at No.118,
Outer Ring Road,
Kempegowda Layout,
Laggere, Bangalore-560 058.
2. Smt.Vijaya Shivakumara
Swamy,
W/o Shivakumar Swamy.S.
Aged Major, No.118,
Outer Ring Road,

- Kempegowda Layout,
Laggere, Bangalore-560 058.
3. Smt.Bhagyashree Shivakumara
Swamy,
D/o Shivakumar Swamy.S,
Aged Major, No.118,
Outer Ring Road,
Kempegowda Layout,
Laggere, Bangalore-560 058.
4. Smt.Ashwini Shivakumara
Swamy,
D/o Shivakumar Swamy.S,
Aged Major, No.118,
Outer Ring Road,
Kempegowda Layout,
Laggere, Bangalore-560 058.

(Defendant No.1 to 4- By
Sri.Y.C.Shivakumar- Advocate)

IA No.14

PLAINTIFF/ APPLICANT:	M/s.Krishna Flour Mills (Bangalore) Private Limited,
DEFENDANTS/ OPPONENTS :	V/s. M/s.Snehamayi Mahila Seva Enterprises and 2 Others

The plaintiff has filed this suit against the defendants to pass a judgment and decree directing the defendants jointly and severally to pay outstanding principal amount of ₹.50,16,356/- on the running account in the name of defendant; to pay interest amount

of ₹.34,57,392/- on the outstanding principal amount @ 22% p.a. from the date of outstanding due till 28.02.2019 and current and future interest at 22% p.a. till the date of realisation.

02. After issuance of summons the defendants have put-forth their appearance before the Court through their counsel and filed written statement.

ORDERS ON IA NO.14

03. The Plaintiff has filed IA No.14 under Section 73 of Indian Evidence Act R/w Section 151 of praying this Court to direct the defendant No.1/DW.1 i.e., Vijaya Shivakumara Swamy to be present before this Court to write words, figures or numerical to be sent along for forensic examination for examining the handwriting and handwritten numerical affixed on the calculation slips marked at Ex.P.61A, Ex.P.104, Ex.P.125, Ex.P.126, Ex.P.127 and Ex.P.136 which is denied by the defendants by comparing with disputed documents in IA No.13/2024 in the above case to meet the interest of justice.

04. In support of IA No.14 Sri.Prashanth.T.H, the Authorized Officer of the plaintiff Company has sworn to an affidavit. In the said affidavit he has averred that the

defendant/DW.1 has raised a false defense to set-off a sum of about ₹27,00,000/- as already paid by the defendant. That, as the said sum of ₹27 Lakhs was paid by the defendant firm which was commenced after closing their earlier trading entity called Snehamayi Mahila Seva Trust which was running from the same address of defendant No.1, wherein defendant No.1 being the new partnership firm have cleared the past debts of the Trust run by same partners by issuing cheques of new partnership firm i.e, defendant firm, along with calculation slips referring to the cheque amount specifically referring to the Trust invoices in each calculation slip which is in similar format used by the defendant firm while clearing payments wherein the defendant No.1 partner specifically gives instructions regarding calculation for each cheque issued mentioning the specific invoices for which the cheques are issued and accordingly the same cheques were appropriated for those particular invoices as instructed in those calculation slips along with cheques which were sent to the plaintiff's company.

05. That, the defendant counsel raised objections stating photocopy of the admitted handwriting and numerical written by DW.1 on the cheques and marked as Ex.P.42, Ex.P.43, Ex.P.44, Ex.P.45, Ex.P.46, Ex.P.61,

Ex.P.92 to Ex.P.100 cannot be compared with disputed handwriting and numerical which are written by DW.1 on the calculation slips which are marked as Ex.P.61A, Ex.P.104, Ex.P.125, Ex.P.126, Ex.P.127 and Ex.P.136. Hence, direct the defendant No.1/DW.1 i.e., Smt.Vijaya Shivakumara Swamy to be present before this Court to write words, figures or numerical to send for Forensic expert for examining the handwriting and handwritten numerical affixed on the calculation slips in addition to the documents already on record but the same may be also taken in alternative as per discretion of this Court to meet the ends of justice as there is no bar to send admitted xerox copies for Forensic examination, however, since the defendant No.1 i.e, DW.1 is available for providing such samples as provided under Section 73 of Indian Evidence Act, the application may be allowed.

06. That, by allowing the accompanying application no prejudice or injury will be caused to the defendant. On the other hand, the plaintiff will be put to irreparable loss, hardship and injury if it is not allowed. By contending so the plaintiff prays to allow the application.

07. On the other hand the defendants have filed the objections contending that the above application is not maintainable in law and on facts and is therefore liable

to dismiss in limine with award of costs. That, the defendants have filed a detailed written statement and additional written statement and DW.1 has filed a detailed examination in chief and the same may be treated as part and parcel of this objections.

08. It is contended that the allegation of the plaintiff that the calculation slips and the handwritten numerical was written by the DW.1 is denied as false. The defendants have neither agreed to clear the alleged liability of the Trust nor the plaintiff established the same as there are no documents produced by the plaintiff to prove the same. It is well established principle that mere opinion of a Handwriting Expert cannot be used to establish liability.

09. That, the calculation slips have been marked subject to objection and the scheme of the Commercial Courts Act, 2015 do not permit the plaintiff to file such an application belatedly. By contending so the defendant prays to dismiss the application.

10. I have heard the arguments addressed by the learned counsel for the plaintiff and defendant.

11. Now the points that arise for my consideration are as under:

- 01. Whether the applicant/Plaintiff has made out a ground so as to allow IA No.14?
- 02. What Order?

12. My findings on the above Points are as under:

- POINT No.1 : In the **AFFIRMATIVE**
- POINT No.2 : As per final Order
for the following

REASONS

13. **POINT No.1** : Keeping in mind the rival contentions of both parties I would like to bestow my attention to the provision under Section 73 of Indian Evidence Act which reads as under:

73. Comparison of signature, writing or seal with others admitted or proved.— In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present

in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[This section applies also, with any necessary modifications, to finger-impressions.]

14. On careful reading of the above provision of law, it is crystal clear that the Court has got jurisdiction to compare the handwriting, signature and to secure the hand writings both in words and digits and also signature of any person so as to adjudicate the case in better perspective.

15. In this case, the plaintiffs are relying upon the xerox copies of the calculation slips which is said to be written by DW.1. The DW.1 is denying the said documents stating that the handwriting appearing upon the said calculation slips do not belong to her.

16. On careful perusal of the records it appears in this case, there is a dispute pertaining to the handwriting which is appearing upon some of the cheques which are marked on behalf of the plaintiffs. In my opinion when one party asserts that the handwriting appearing on the documents belongs to DW.1 and when the DW.1 denies the same then the Court has got ample

power to direct the witness DW.1 to appear before the Court so as to write the words and handwriting which is similar as upon the disputed documents relied upon by the plaintiff. When the defendants are raising an objection that the xerox copies cannot be sent to the handwriting expert, then in order to meet ends of justice and to adjudicate the case and to do complete justice the DW.1 should be called upon directing her to write down the words and digits as are appearing in the disputed documents.

17. If the DW.1 is directed to write down her handwriting then the Court will get an opportunity atleast to compare it with the admitted and disputed handwriting of DW.1 and if at all any need arises the said admitted and disputed documents along with the handwritten copies of the defendant No.1 before the Court can be sent to Forensic Laboratory.

18. The learned counsel for the plaintiffs relying upon the decision reported in **2013 (4) SCC 546** argued that even the photo copies of the admitted documents can be sent to handwriting expert. However, as in this case, the xerox copies of calculation slips and the cheques are not admitted by DW.1 and hence in my

opinion it is better to call DW.1 to write down in her handwriting so as to decide the case.

19. As the burden is upon the plaintiffs to prove the transaction and as this Court being the Court of first instance, I am of the opinion that, an opportunity should be accorded to the plaintiff to prove their case effectively.

20. The law laid down by the Hon'ble High Court of Karnataka in **ILR 2007 Kar 247** is clear that whenever there is a slightest doubt and suspicious regarding the document and if the circumstances of the case mandates then this Court can exercise its jurisdiction by comparing the disputed signature with the admitted signature.

21. If the DW.1 is directed to keep herself present before the Court so as to write in her handwriting the words and the digits as appearing in the disputed cheques and calculation slips, then it will not prejudice the case of the defendant in any manner, per contra it will help the Court to decide the case effectively.

22. If the application is allowed then defendant will not suffer any prejudice on the other hand if the application is rejected, then the plaintiff will suffer injury

which cannot be compensated in terms of money. Hence, the application filed by the plaintiff deserves to be allowed. Accordingly, I answer the above point No.1 in the **AFFIRMATIVE**.

23. **POINT No.2 :** In view of the above discussions on Point No.1, I proceed to pass the following:

ORDER

The IA No.14 filed by the plaintiff under Section 73 of Indian Evidence Act R/w Section 151 of CPC is hereby allowed.

The defendant No.1/DW.1-Smt.Vijaya Shivakumara Swamy is hereby directed to keep herself present before the Court by next date of hearing so as to enable this Court to secure her signature, handwriting in words, figures and numerical in front of this Court.

(Directly dictated to the Stenographer on computer, corrected and then pronounced by me in the open court on this the **6th day of January 2025**).

(K.M.RAJENDRA KUMAR)
LXXXIX Addl.City Civil &
Sessions Judge, Bengaluru
(CCH-90)

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