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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TEST.CAS. 57/1996 & I.A. 2263/2016.**

SH. PRADYUT KAR

..... Petitioner

Through: Mr. Mohit Seth and Ms. Priyadarshi
Banerjee, Advocates.

versus

STATE & ORS.

.... Respondents

Through: Mr. Pradeep K. Dubey, Mr. Vineeth
S. and Mr. Ravindra Kumar Gupta,
Advocates for R-4 to 6.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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07.04.2022

I.A. No. 12188/2020 (u/ Sec. 151 of the CPC seeking photography of relevant documents to rebut the evidence of RW-5)

1. By way of this application, the Applicant/ Petitioner seeks the following reliefs: -

“In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon’ble Court may be pleased to allow the petitioner and his expert, Mr. B.N. Srivastava to duly photograph the relevant documents in order to rebut the evidence of RW-5, Mr. Deepak Jain as per the liberty granted by this Hon’ble Court vide order date 15.01.2019.”

2. The documents sought to be examined for the purpose of taking photographs by the expert for his opinion are enumerated in paragraph No. 7 of the instant application, that read as under: -

“1) Photographs of Original Will dated 26.12.1995 including the



photographs of Will annexed with the list of documents of the respondents dated 01.10.1999 at page 7,8,9,10.

2) *Photographs of Original letters written by Late Shri PC Kar exhibited as Ex-P1/2, Ex-P1/7 and Ex-P1/10*

3) *Photographs of Original Receipts in handwriting of Late Shri PC Kar exhibited as Ex-P9 and Ex-P10.”*

3. On 15th January, 2019 – the Court while dealing with an application filed by Respondents No. 4 to 6 seeking permission to take expert opinion *qua* certain documents observed as under: -

“1. Respondents No.4 to 6 are seeking permission to take the expert opinion of Mr. Deepak Jain with respect to the signatures of the deceased on the Will dated 26th December, 1995. Respondents No.4to 6 are also seeking permission to Mr. Deepak Jain to take the photographs of the disputed signatures as well as the photographs of the admitted signatures of the deceased for comparison.

*2. The application is allowed and respondents No.4 to 6 are permitted to take opinion of the handwriting expert Mr. Deepak Jain. **After recording of the expert evidence, the petitioner shall be at liberty to rebut the evidence of the handwriting expert of respondents No.4 to 6.***

3. List before the Joint Registrar on 18th February, 2019 when the Joint Registrar shall examine as to which documents contain the admitted signatures of the deceased. The Joint Registrar shall thereafter fix a date for the expert to take the photographs of the admitted as well as the disputed signatures of the deceased.”

[Emphasis supplied]

4. Subsequently, with the assistance of the counsel for the parties – the admitted/ denied documents containing signatures of the deceased Mr. Probhodh Chandra Kar were identified by the respective parties and listed in the Order dated 18th February, 2019 and photographs thereof were taken by Respondent’s handwriting expert.

5. Respondents’ evidence is complete and the matter is now at the stage of rebuttal evidence of the Applicant. In these circumstances, the instant



application has been filed alleging that there are certain additional documents apart from those identified/ mentioned in the Order dated 18th February, 2019 and Applicant's handwriting expert should be allowed to photograph the documents enumerated in paragraph No. 7 of the said application in order to rebut the evidence of the Respondents' handwriting expert.

6. The Applicant has been permitted only to lead rebuttal evidence in compliance of the Order dated 15th January, 2019. The expert produced by Respondents No. 4 to 6 has examined 12 documents containing signatures of the Testator viz. deceased Mr. Probhodh Chandra Kar, which finds mention in the Order dated 18th February, 2019. Therefore, the Applicant cannot be permitted to enlarge the scope of the rebuttal evidence. The onus of proving the will in question is on the Applicant/ Petitioner. The Applicant had to produce all evidence to prove the will at the first instance. Now we are the stage of rebuttal evidence, scope whereof is limited. Further, the additional documents sought to be examined listed in paragraph No. 7 are those which are denied by Respondents No. 4 to 6. It must also be noted that the original will in question is typed and not hand-written; containing only the signatures of the person who is purported to be the Testator. The additional documents now sought to be examined by the expert do not have any signatures of the purported Testator.

7. For the foregoing reasons the Court does not find any good ground to enlarge the scope of the rebuttal evidence by permitting the Applicant to examine documents in paragraph No. 7, extracted above. Accordingly, the



application is allowed to the limited extent of allowing Petitioner's expert – Mr. B.N. Srivastava to photograph the documents enumerated in the Order dated 18th February, 2019 only.

8. For this purpose, list before the Assistant Registrar (Original) on 05th May, 2022 at 11:00 AM. The said expert shall file the report within a period of four weeks from today.

9. Thereafter, list the matter before the Ld. Joint Registrar for recording of the rebuttal evidence of the Applicant/ Petitioner on 08th July, 2022.

SANJEEV NARULA, J

APRIL 7, 2022

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