

03.04.2024
Item No.09
Court No.6.
S. De

**FA 208 of 2011
With
I.A. No. CAN/4/2023**

**Swarbhanu Nan.
Vs
Subhadip Nan & Ors.**

Mr. Sayantan Bose,
Ms. Shohini Chakraborty,
Ms. Manisha Das, ...for the appellant.

Mr. Jahar Chakraborty,
Mrs. Sabita Mukherjee Roy,
Mr. Saket Dan, ...for the respondents.

In re : I.A. No. CAN/4/2023

The appellant has filed this application for appointment of a hand writing expert to compare the hand writing of the alleged will of let Sachchidananda Nan with the hand writing in a document which was marked as Exhibit 'B' in the suit and which is admittedly written by the testator.

We had directed exchange of affidavits. Affidavits have been filed. We have heard learned advocates for the parties.

Learned advocate for the respondents/defendants, with some justification, says that this prayer ought to have been made by the appellant/plaintiff before the learned Trial Judge. After all, it was the obligation of the plaintiff to prove the genuineness of the alleged will by producing whatever evidence that he could. He did not do so. At

this stage, he should not be permitted to make a prayer like the one he has made in the application.

We definitely see some substance in the submission made by learned advocate for the respondents/defendants. However, this is the First Appellate Court – a Court of fact and law. The ultimate object is to get to the truth of the matter. We do not think that any prejudice will be caused to the respondents/defendants if we call for a report from a hand writing expert.

Accordingly, we request the learned Registrar, Original Side, High Court at Calcutta, to send the alleged Will of the Testator being Exhibit –1 in the suit and the document being Exhibit 'B' in the suit, copies whereof are Annexures 'A' and 'B' respectively to CAN 4 of 2023, to the Central Forensic Science Laboratory, Kolkata (in short 'CFSL') for being examined and for its opinion in the form of a Report as to whether or not the handwriting in the said two documents is of the same person. CFSL will be at liberty to raise bill for the expenses that it may have to incur for furnishing the aforesaid report. The Bill amount shall be paid by the appellant at the first instance. The report shall be made available by CFSL to the learned Registrar, Original Side, High Court at Calcutta, within three weeks from receipt of a copy of this order along with the aforesaid two documents from the learned

Registrar. Once the learned Registrar receives the report of the CFSL, she shall cause this appeal to be listed before the appropriate Bench.

I.A. No. CAN/4/2023 is disposed of.

In re : F.A. 2018 of 2011

List the appeal once again on April 25, 2024.

(Arijit Banerjee, J.)

(M.V. Muralidaran J.)