

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Revision No. 54 of 2015

Reserved on: 19.05.2016.

Date of Decision: May 31, 2016

Mrs. Neelam Rana

...Petitioner.

Versus

Mrs. Meera Dewan.

...Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

*Whether approved for reporting?*¹ Yes.

For the Petitioner: Mr. G.C. Gupta, Sr. Advocate with Ms. Meera Devi, Advocate, for the petitioner.

For the Respondents: Mr. R.L. Sood, Sr. Advocate with Mr. Sanjeev Kumar, Advocate, for respondent No.1.

Sanjay Karol, J.

In this petition, filed under Section 115 of the Code of Civil Procedure (hereinafter referred to as CPC), challenge is laid to the order dated 25.03.2015, passed by learned District Judge, Solan, H.P., in Case No. 1-S/1 of 14/07, titled as *Meena Dewan Versus Neelam Rana*.

2. In terms of the impugned order, defendant's (petitioner herein) application, so filed under Section 45 of

¹ Whether reporters of the local papers may be allowed to see the judgment?

the Indian Evidence Act, 1872, praying for the following relief, came to be dismissed:-

"It is, therefore, very humbly prayed that the application may kindly be allowed and the alleged Supplementary agreement dated 01.10.2004 containing the signatures of the defendant except signature on last page on approval of cutting by taking the specimen signature of the defendant and also to take the disputed signature of the author as well as the signatures of the attesting witnesses to verify the genuineness of the signatures And Also the power of attorney dated 01.10.2004 alleged to be executed by defendant in favour of Kishore Singh son of Shri Abhrai Singh son of Shri Rumel Singh, resident of Village Gathot, Tehsil Indora, District Kangra, H.P. registered as document NHo. 258 on 01.10.2004 before Sub-Registrar Kasauli to verify the tampering / removal of original photograph and removal/pasting of photograph of executant and attorney holder and also the life of the ink used in signatures as well as in the documents, may kindly be sent to FSL Junga for examination by handwriting expert and for his opinion, in the interest of justice."

3. The scope of Section 115 of CPC needs to be examined first.
4. In *N.S. Venkatagiri Ayyangar and another Versus The Hindu Religious Endowments Board, Madras*, A.I.R. (36) 1949, Privy Council 156, the Court after examining the legislative intent of Section 115 of CPC, held the same to

apply only in cases where no appeal lies. The manifest intention, in passing of the order of the trial Court, whether right or wrong, attaches finality. This Section empowers the High Court to satisfy itself as to whether (a) order of the Subordinate Court is within its jurisdiction; (b) that the Court could have exercised its jurisdiction; (c) that in exercise of such jurisdiction, Court has acted illegally, that is, in breach of some provisions of law, or with material irregularity, that is, by committing some error of procedure in the course of trial, which is material in that it may have affected the ultimate decision. With the High Court being satisfied with regard to the same, it would have no power to interfere only if it were to differ, howsoever, profoundly from the conclusion of the Subordinate Court upon questions of fact or law.

5. A five-Judge Bench of the Apex Court in *Pandurang Dhondi Chougule and others Versus Maruti Hari Jadhav and others*, AIR 1966 SC 153, has further elaborated on the scope of interference by this Court. It is only in cases, where the Subordinate Court has exercised the jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the

revisional jurisdiction of the High Court can be properly invoked.

6. A two-Judge Bench of the Apex Court in *M/S. D.L.F. Housing and Construction Company (P.) Ltd., New Delhi*, 1969(3) SCC 807, further held that:-

"5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law,

after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal"

(Emphasis supplied)

7. The principle stands reiterated by another five-Judge Bench of the Apex Court in *Hindustan Petroleum Corporation Limited Versus Dilbahar Singh*, (2014) 9 SCC 78.

8. The Apex Court in *Johri Singh Versus Sukh Pal Singh and others*, (1989) 4 SCC 403, has further held that:-

"23. Consequently, the High Court had jurisdiction to interfere with the order of the Senior Subordinate Judge only -(i) if the said Judge had no jurisdiction to make the order it has made, and (ii) had acted in breach of any provision of law or committed any error of procedure which was material and may have affected the ultimate decision. If neither of these conditions was met the High Court had no power to

interfere, however profoundly it may have differed from the conclusion of the Senior Subordinate Judge on questions of fact or law."

9. To similar effect is the ratio of law laid down in *Jagdamba Prasad (Dead) through Legal Representatives and others v. Kripa Shankar (Dead) through Legal Representatives and others*, (2014) 5 SCC 707; and *John Kennedy and another v. Ranjana and others*, (2014) 15 SCC 785.

10. In view of the aforesaid discussion, one now proceeds to examine the jurisdictional error or irregularity/material irregularity, if any, committed by the Court below, in passing the impugned order. For proper appreciation and determination of the controversy in issue, it would be profitable to extract the relevant portion thereof:-

"5. Be it noted that disputed Power of Attorney has been placed on record as Ex.PW7/A by the plaintiff and the same has been exhibited and the copy of the same Ex.PW1/A has been proved by Deepak Kumar (PW-1) Registration Clerk in the office of Sub Registrar, Kasauli. Brig. Bikram Rana (DW-1), who is GPA of the defendant in his cross-examination has specifically admitted that the signatures in circle A, B, C, D, E and F on Power of Attorney Ex.PW7/A are that of the defendant, who is his wife though he has further stated that such signatures were obtained on

many papers by the plaintiff and later on he misused these papers. Not only this it further admitted by DW-1 that the finger prints on Power of Attorney is that of his wife, though he has again stated that such finger prints were obtained by mis-representation. Thus DW-1 who appeared on behalf of the defendant as her Power of Attorney has not denied the signatures of the defendant on disputed Power of Attorney but on the other hand he has admitted the same. Thus in view of such admission made by DW-1 in his cross-examination it appears that the present application has been moved by the defendant just to wriggle out of such admission made by DW-1 in cross-examination. In such circumstances I am of the considered opinion that no useful purpose is likely to be served by sending the Power of Attorney in question for comparison to some expert as prayed by the defendant.

6. Supplementary agreement dated 1.10.2004 has placed on record as Ex.PW5/B which has been exhibited in the statement of the plaintiff while appearing as PW-5. On perusal of said agreement it is clear that at the time of admission and denial, the defendant has admitted her signatures upon such agreement though contents of the said agreement have been denied by the defendant. Thus in view of such admission having been made by the defendant at the time of admission and denial of the documents, it is clear that the defendant has also not disputed her signatures upon supplementary agreement dated 1.04.2004 which is Ex.PW5/B.

7. On perusal of written statement filed by the defendant it is clear that the plea of the defendant is

that her signatures were obtained by the plaintiff on some blank non judicial papers and other papers on the pretext that permission to purchase the land has to be obtained from State Government and it appears that the said signatures have been misused by the plaintiff No.1 which plea of the defendant can be decided only on merits after the parties have adduced their evidence. Since the defendant at the time of admission and denial of the documents has admitted her signatures upon disputed supplementary agreement dated 1.10.2004 no useful purpose is again likely to be served by sending the said document to Handwriting Expert for comparison with signatures of the defendant and signatures of author and signatures of the witnesses and it appears to me that the defendant has filed the present application just to wriggle out of the admissions already made by her in her pleadings and also in the evidence.

8. It is further to be noted that the case is pending for cross-examination of DW-1 since 10.07.2013 and the cross-examination of DW-1 has still not been concluded as he did not appear in the court on 26.07.2014, 2.08.2014, 27.09.2014 and 22.11.2014 and it is thereafter that the present application was moved on behalf of the defendant under section 45 of the Indian Evidence Act and thus it also appears that the present application has been moved by the defendant just to linger on the proceedings of the case."

(Emphasis supplied)

11. Order is self-explanatory. It cannot be said that the Court below exceeded its jurisdiction in passing such order. It is not that, in law, Court below was not vested with any jurisdiction to do so. It also cannot be said that the Court below failed to exercise the jurisdiction, so vested in it. The only question which needs to be examined is as to whether in exercise of such jurisdiction, the Court below committed any illegality or material irregularity. What is that "illegality" and "material irregularity" already stands explained by the Apex Court in *D.L.F. Housing* (supra).

12. On the strength of agreement to sell dated 09.05.2004 (Ex.PW.5/A) and supplementary agreement dated 01.10.2004 (Ex.PW/5B), on 07.05.2007, plaintiffs Mrs.Meera Dewan and Shri Ashok Chopra (respondents herein) filed a suit for Specific Performance against defendant Mrs.Neelam Rana (petitioner herein).

13. In the written statement, so filed by defendant, duly affirmed by her husband as her Special Power of Attorney, she admitted having signed certain blank stamp and other papers. Allegedly she never executed the agreements/documents, set up by the plaintiffs, which according to her are nothing, but an act of manipulation and forgery.

14. Noticeably, on the strength of the pleadings of the parties, during trial, on 07.01.2008, following issues came to be framed:-

- “1. Whether the defendant executed agreement of sale on May 9, 2004 and supplementary agreement dated 1st October, 2004? OPP
2. In case issue No.1 is proved, whether the plaintiffs were and are ready and willing to perform their part of contract, as alleged? OPP
3. Whether the power of attorney executed in favour of Kishore Singh is forged, as alleged, if so, its effect? OPD
4. Whether the defendant never executed any power of attorney in favour of Shri Tikkar Ram? OPD
5. Whether the plaintiff No.1 failed to perform his part of contract and the amount paid to defendant stood mutually adjusted, if so, its effect? OPD
6. Whether the suit, as framed, is not maintainable? OPD
7. Whether the suit is barred by limitation? OPD
8. If issue No.1 is proved, whether the agreement is void ab initio and is hit by provision of Section 118 of H.P. Tenancy and Land Reforms Act? OPD (framing of issue is objected to by the learned counsel for the plaintiffs).
9. Whether the plaintiffs have no locus standi to file the present suit? OPD
10. Relief.”

15. It is a matter of record that in the year 2012 itself, plaintiffs led their entire evidence, when opportunity

to lead evidence was afforded to the defendant. In fact, on 30.05.2012, the Court itself fixed the date for recording of evidence. Now on such date i.e. 12.10.2012, it came to be observed that the defendant had neither filed any list of witnesses nor taken any steps for summoning them. By way of indulgence, defendant was permitted to do the needful and matter was adjourned for 26.12.2012, for recording the evidence. Record reveals that even on this date, while expressing its anguish for not complying with the earlier orders, on the request of the husband of the defendant, Court adjourned the matter for 09.01.2013, on which date, his statement as General Power of Attorney of the defendant was to be recorded. But even on that date, witness was not present. Record further reveals that repeatedly, defendant came to be accommodated and only on 24.05.2013 statement of the Special Power of Attorney came to be partly recorded. However, before this witness could be further examined, in the interregnum, on account of enhancement of the pecuniary jurisdiction, of this Court, transferred the suit to the Court of District Judge, Solan, a Court having competent jurisdiction. Record also reveals that even before that Court, defendant continued to seek adjournments and on 29.03.2014 even cost of `5000/- was

imposed. The fact of the matter being that even thereafter, for one reason or the other, this witness could be cross-examined only in part.

16. Now during this process, on 10.12.2014, defendant filed the application in question.

17. Significantly, in his examination-in-chief, defendant's husband, admits signatures on the Power of Attorney (Ex.PW.7/A) as also finger prints there upon, to be that of his wife. According to the learned Senior Counsel appearing on behalf of the plaintiff, this witness has taken a self-contradictory and vacillating stand. At this stage, this Court is not required to go into this aspect, but then from the bare perusal of his testimony, it is quite apparent that signatures as also finger prints on the Power of Attorney (Ex.PW.7/A) are admitted to be that of the defendant. Such admission came to be made on 06.06.2014, a date much prior to the filing of the application in question.

18. In the application dated 10.12.2014, none of these facts came to be mentioned by the defendant. Why so? Remains unexplained.

19. Through the application, defendant only wants the authenticity of her signatures on the supplementary agreement dated 01.10.2004 (Ex.PW.5/B) and Power of

Attorney (Ex.PW.7/A) to be verified and ascertained. But then such fact stands admitted.

20. In the light of admissions made by the defendant herself, having admitted her signatures also at the time of admission and denial of the documents, instant application being highly misconceived, rightly stands rejected and as is so held by the Court below, filed only to linger on the proceedings.

21. There is the limit to which a party can misuse or abuse the process of law. Since 2012, Court had been more than indulgent towards the defendant, perhaps for the reason that she is a lady, but then she continued to take undue advantage of such discretion and by taking the Court for granted filed a totally misconceived application with a *malafide* intent. The sole object being to procrastinate the proceedings. Her conduct is absolutely contumacious and contemptuous, for if at all such application was to be filed, it had to be done at the first opportune moment and definitely not after having admitted her signatures on the documents.

22. It is a matter of record that the entire sale consideration, amounting to `27,00,000/-, stood paid by the plaintiffs and received by the defendant, way back in the year 2003 itself. Whether thereafter petitioner turned

dishonest, as is so alleged by the plaintiffs, in terms of the agreement, rightly forfeited the said amount, as is so claimed by her, is a question which the trial Court is required to examine. But, the fact of the matter is that the trial stands delayed by her. There is neither any procedural error nor any error of fact or law.

23. During trial, Court specifically framed the issue of the documents being forged. This was so done way back in January 2008. Defendant chose only to examine one witness, whose testimony also, for one reason or the other, could not be recorded for more than three years.

24. Can it be said that Court below erred in correctly exercising its jurisdiction? Can it be said, in exercise of its jurisdiction, Court below committed an illegality or material irregularity? In the backdrop of the aforesaid discussion and keeping in view the principle laid down by the Apex Court in *Pandurang Dhondi Chougule and D.L.F. Housing* (supra), most certainly not. There is no error of law in appreciation of facts or application of law.

25. A five-Judge Bench of the apex Court in *Shashi Kumar Banerjee and others v. Subodh Kumar Banerjee*, AIR 1964 SC 529, has clearly held that the expert's evidence as

to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence.

26. To similar effect are the decisions rendered in *Fakhruddin v. The State of Madhya Pradesh*, AIR 1967 SC 1326; and *Ram Narain v. State of Uttar Pradesh*, (1973) 2 SCC 86.

27. Significantly, there is substantive evidence on record to prove the issues framed by the Court. Hence, the trial Court rightly rejected the application, more so in the absence of any name of the author having been mentioned in the application.

28. It is a settled position of law that the onus to prove the contract of sale of immoveable property is on the plaintiff. Whether there was consensus or they were *ad idem*, on the issue of contract being concluded, is a question which the trial Court is to consider. (See: *K. Nanjappa (Dead) by Legal Representatives v. R.A. Hameed alias Ameersab (Dead) by Legal Representatives and another*, (2016) 1 SCC 762).

29. As already observed, the impugned order being self-explanatory, the application rightly stands rejected by the Court below. But the defendant cannot be allowed to go scot-free, for she invoked the jurisdiction of this Court and

the instant petition has been pending for more than one year. She has wasted valuable time of this Court. Also only on her asking, proceedings before the trial Court, came to be stalled.

30. As such, present petition, to meet the ends of justice, is disposed of in the following terms:-

- (a) Impugned order dated 25.03.2015, passed by learned District Judge, Solan, H.P., in Case No. 1-S/1 of 14/07, titled as *Meena Dewan Versus Neelam Rana*, is affirmed;
- (b) Petitioner shall pay costs quantified at `25,000/- to the plaintiffs;
- (c) Trial is expedited;
- (d) Parties are directed to appear before the Court below on 15.06.2016, on which date the trial Court shall fix a date/date(s) for appearance of the only witness of the defendant left to be cross-examined;
- (e) On such date(s), this witness shall be cross-examined;
- (f) If the witness fails to make himself available, his entire testimony shall be struck off from the record and not read as evidence;

- (g) In such event the defendant's evidence shall be presumed to have been closed and the trial Court shall decide the suit on the basis of material on record; and
- (h) Parties shall fully cooperate and not take any unnecessary adjournments;

In view of the above, present petition stands disposed of, so also pending application(s), if any.

(Sanjay Karol),
Judge.

May 31, 2016
(Purohit)