

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.1455 of 2019

Vivek Jain, Aged about 38 years, son of Late Mamraj Jain, resident of Main Road, Ghatshila, PO & PS: Ghatshila, District-East Singhbhum.

..... Defendant No.1(c)/Petitioner

Versus

1.Gyanendra Kumar Singh, son of Sri Shyam Bihari Singh, resident of Sukhdeonagar, P.O & P.S-Sukhdeonagar, District-Ranchi.

..... Plaintiff/Respondent.

2.Smt. Lalita Jain, widow of Late Mamraj Jain,

3.Vikash Jain

4.Rakesh Jain, both sons of Late Mamraj Jain,

All are residents of Main Road, Ghatshila, PO&PS: Ghatshila, District-East Singhbhum.

5. Abdul Rab (Anjum), Son of Abdul Rashid, resident of Cross Road No.1, House No.15, Azad Nagar, PO&PS: Mango, Town Jamshedpur, District- East Singhbhum.

..... Defendantno.1, 1(a), 1(b) / Proforma Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Ashim Kumar Sahani, Advocate

For the Respondents :

03/Dated 30th April, 2019

This writ petition is under Article 227 of the Constitution of India whereby and whereunder the order dated 23.02.2019 passed by Sub-Judge VI, Ranchi in Original Suit no.57 of 2005 has been sought to be quashed.

The brief facts of the petitioner as per the pleading made in the writ petition is that a suit for specific performance has been filed by the respondent no.1 being Title Suit no.57 of 2005 for a decree for specific performance of an agreement dated 07.08.2002 and for direction upon the defendant no.1/respondent to put him in constructive possession and the property be sold with the existing tenant/occupant and to execute a registered deed for permanent injunction.

The petitioner/defendant after being noticed by the trial court has appeared and filed written statement on 21.02.2008 wherein he has denied the agreement dated 07.08.2002. The trial court has framed the issues and thereafter proceeded with the trial. Evidence of the petitioner as defendant's witness has been closed vide order dated 23.02.2019 whereby and whereunder the time petition filed by the petitioner for adjournment of the

case has been rejected and the case was posted for defendant's evidence on 12.03.2019.

The grievance of the petitioner is that the time petition was filed on the pretext that a petition was filed by him as under Annexure-1 dated 23.02.2019 seeking therein a direction from the trial court to send the agreement for sale in question for verification of signature to the Government handwriting and signature expert at the cost of respondent no.1/petitioner herein. The contention of the learned counsel for the petitioner that the said signature is required to be proved for proper adjudication of the issue and as such, the trial court has committed gross illegality in rejecting the time petition dated 23.02.2019 and, therefore, the instant writ petition.

After having heard learned counsel for the petitioner and going across the pleading made in the writ petition as also the impugned order dated 23.02.2019 it appears therefrom that the petitioner has appeared and has filed written statement on 21.02.2008 and thereafter the suit has been posted for trial.

After conclusion of the plaintiff's evidence the case has come at the stage of defendant's evidence but it appears from the order dated 02.02.2019, in pursuant thereof, the said order dated 02.02.2019 has been produced, the trial court by taking into the various dates available on record on which the matter was adjourned has passed the said order recalling the order dated 18.12.2018 and 04.01.2019 by which the case was posted for judgment by depositing a cost of Rs.5,000/- to be paid to the plaintiff. But even thereafter the petitioner has failed to examine the witnesses and then at that stage the petition dated 23.02.2019 has been filed as contained in Annexure-1 seeking direction from the trial court to send the agreement dated 07.08.2002 for examination of the signature of the defendant to Government approved handwriting and signature expert.

The trial court, vide order dated 23.02.2019 (impugned), has rejected it by taking into consideration the order dated 02.02.2019 and posted the case by allowing further chance to the petitioner to produce the defendant's evidence by posting the case on 12.03.2019 but as evident from order dated 12.03.2019 the petitioner has examined two witnesses and simultaneously has filed a time petition for adjournment of the case so that he may file appropriate application before the higher forum assailing the order dated 23.02.2019. But the trial court has rejected the same and closed the

defendant's evidence and posted the case on 28.03.2019 for producing the appellate court's order by the defendant.

Mr. Sahni, learned counsel for the petitioner has submitted that thereafter the instant writ petition has been filed, assailing the order dated 23.02.2019. The contention which has been raised by the learned counsel for the petitioner that the genuineness of the signature as it appears in the face of agreement in question needs to be examined and therefore the petitioner put his appearance before the trial court and has filed written statement denying the genuineness of signature but no such application has been filed fairly for a long period rather knowing fully well that the suit was posted twice for pronouncement of judgment i.e. 18.12.2018 and 04.01.2019 and allowed the petitioner to put his defence for examination but even then he has not availed the said opportunity rather he has filed application on 23.02.2019 seeking therein prayer to send the signature contained in agreement dated 07.08.2002 for its examination by the Government examiner and, therefore, the trial court after considering it to be an approach with ulterior motive only to delay the proceeding and the petitioner knowing it well that the time was allowed even by recalling the order by which the case was posted for pronouncement of judgment twice, has only in order to linger the matter filed such petition at belated stage and the trial court while passing the order dated 23.02.2019 by making reference dated 02.02.2019 has not committed any error.

It is also needs to be referred herein that after rejecting the time petition dated 23.02.2019 the matter was posted on 12.03.2019 granting time to the petitioner to produce his evidence but a time petition was filed for seeking relief against the order dated 23.02.2019 to be challenged before the higher forum. The trial court considering the conduct of the petitioner and coming to the conclusion that the time has been sought only to linger the trial, has closed the defendant evidence and posted the case on 23.02.2019.

According to the considered view of this Court it is not a case in the nature where any interference is required to be made in view of the conduct of the petitioner.

So far as legality of the order dated 23.02.2019 is concerned it is not in dispute that sending of the document for verification of signature by the expert is not to be exercised by the trial court on the settled position of law

that if a party is taking a plea, onus is upon the said party to prove or disprove the said contention.

Here the petitioner has questioned the said agreement in the written statement as such, onus is upon him to prove the said evidence by leading evidence in this regard and, therefore, the order passed by the trial court not sending the agreement dated 07.08.2002 for verification of signature over there cannot be said to be illegality considering the facts that court cannot be a party to give aid for collecting evidence.

In view thereof, this Court is not inclined to interfere with the impugned order dated 23.02.2019 in exercise of power conferred under Article 227 of the Constitution of India.

Accordingly, the writ petition fails and is dismissed.

(Sujit Narayan Prasad, J.)

Madhav