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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 31.07.2023

+ **CM(M) 1285/2022 & CM APPL. 50721/2022**

MRS KAMLA KAPOOR & ORS. Petitioners

Through: Mr. Mohammad Ali and Ms. Prachi
 Gupta, Advocates

versus

MS TEJINDER KAUR KOHLI & ORS. Respondents

Through: Ms. Indira Marla, Advocate for R-1.
 Mr. Abhay Raj Varma (Through VC)
 and Mr. Arjun Rekhi, Advocates for
 R-2 to R-4

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 02.08.2022 passed by the ADJ-10, Central District, Tis Hazari Courts, Delhi ('Trial Court') and orders dated 03.10.2018 and 08.12.2016 passed by the Predecessor Bench of the Trial Court, in CS No. 15817/2016, titled as '*Tejinder Kaur Kohli v. Kamla Kapoor & Ors.*'.

1.1. The Petitioners herein are original defendant nos. 1 to 4 and Respondent No.1 herein is the original plaintiff in the civil suit.

1.2. The Petitioners herein are seeking setting aside of the impugned orders and grant of permission to examine the disputed documents i.e., Memorandum of Deposit of Title Deed (Ex. CW 1/B) and Demand



Promissory Note (Ex. CW-1/A) [collectively referred to as ‘disputed documents’] from a typewriting expert, as per law.

2. The Respondent No.1 herein, Ms. Tejinder Kaur Kohli, filed a civil suit on 24.07.2008 with respect to property bearing Plot No. 99, Block – 171, Sunder Nagar, New Delhi (‘suit property’), *inter alia*, praying for the following reliefs: -

“A. A Decree for sale of the property bearing Plot No. 99, Block – 171, Sunder Nagar, New Delhi i.e. the suit property and direct payment of the outstanding loan amount alongwith interest @ 12% per annu, till the date of the payment to the Plaintiff from the proceeds of sale of the mortgage property;

B. A decree of permanent injunction in favour of the Plaintiff and against the Defendants thereby restraining Defendants their heirs, agents, representatives, employees etc. from transferring, alienating or creating any third party interest in the suit property”

3. The defendant nos. 1 to 4 (i.e., the Petitioners) in the said civil suit filed an application dated 03.05.2016 under Section 151 of Code of Civil Procedure, 1908 (‘CPC’) seeking permission to lead evidence of hand writing expert of their choice with respect to the disputed documents, to enable the defendant nos. 1 to 4 to substantiate their stand that the signatures on Demand Promissory Note (Ex. CW-1/A) are forged and do not pertain to late Sh. Inder Raj Kapoor.

3.1. The Trial Court *vide* order dated 08.12.2016 allowed the said application filed by the defendant nos. 1 to 4 (i.e., the Petitioners) and granted permission to the defendant nos. 1 to 4.

3.2. During the course of said proceedings dated 08.12.2016, the defendant nos. 1 to 4 (i.e., the Petitioners) also sought permission to permit the handwriting expert to examine Ex. CW-1/A and Ex. CW-1/B and ascertain typing fonts so as to opine whether the disputed documents have been typed manually by using the same typewriter or not (hereinafter referred to as



‘second submission’).

3.3. With respect to the second submission, the Trial Court observed that the aspect of examination of the typing fonts of the typewriter would require examination by a typewriting expert, which is distinct from a hand writing expert, to depose and therefore, observed that the Petitioners herein should move a separate application for the said purpose.

3.4. It has however, come on record that the Petitioners did not avail the permission granted by the Trial Court on 08.12.2016 to have the disputed documents examined by the handwriting expert. Further, no separate application was filed for examination by a typewriting expert.

4. The Petitioners herein instead filed an application under Section 151 of CPC on 25.02.2017 seeking permission for examination of disputed documents, by Scientific Experts of CFSL.

4.1. However, the said application was dismissed by the Trial Court *vide* order dated 20.04.2017, while observing that the Trial Court had earlier *vide* order dated 08.12.2016 already permitted the Petitioners to examine the handwriting expert of their choice.

4.2. The Trial Court held that the said application dated 25.02.2017 cannot be allowed since, (i) such opinion cannot be obtained from experts of CFSL who are burdened with criminal cases; and (ii) opinion on these documents as to whether same were typed on the same typewriter may not be within the domain of any expert of CFSL.

4.3. The Trial Court further held that such an opinion, if required, could have been obtained by the Petitioners at the earlier stage of proceedings especially when statement of defendant no.2 in terms of Order 10 Rule 2 of CPC was already recorded on 01.02.2011.



4.4. The order dated 25.02.2017 dismissing the said application became final.

5. The Trial Court framed additional issues No. 1A & 1B *vide* order dated 27.07.2017 at the request of the Petitioners.

6. The Petitioners herein thereafter, filed another (3rd) application dated 05.09.2017 under Section 151 of CPC seeking examination of the disputed documents by the handwriting expert for giving his opinion in terms of additional issues No. 1A & 1B.

6.1. The Trial Court while considering the said application, *vide* order dated 01.11.2017 granted another opportunity to Petitioners to examine 'any witness' including expert as already permitted *vide* earlier order dated 08.12.2016. The Trial Court, however, imposed costs of Rs. 10,000/- on the Petitioners, since numerous opportunities had already been granted to examine the expert witness; however, the Petitioners had failed to avail the same.

6.2. The Petitioners yet again failed to avail the opportunity granted on 01.11.2017.

7. The Petitioners instead filed an application dated 10.11.2017 seeking clarifications of earlier order dated 01.11.2017. The Trial Court *vide* order dated 28.11.2017 dismissed the said application for clarification as being without merits.

7.1. The Trial Court however, *vide* order dated 28.11.2017 allowed the handwriting expert to inspect the disputed documents from Court file and to take photographs on 29.11.2017 at 3:00 p.m. in the presence of plaintiff/her counsel.

8. The Petitioner thereafter filed on the very next date i.e., on 29.11.2017,



moved a handwritten application (4th application) seeking permission to allow the handwriting expert, Sh. Deepak Jain, to take photographs of the disputed documents, which was allowed by the Trial Court on the same date and Sh. Deepak Jain was allowed to take photographs of the signatures on the Demand Promissory Note.

8.1. The Petitioner on the same date also proposed to examine Sh. Deepak Jain on the issue as to whether the disputed documents were typed manually by using the same typewriter. The Trial Court however, on 29.11.2017 declined the said request while reiterating the observation made by the Trial Court on 08.12.2016.

9. The Petitioners failed to avail the permission granted by the Trial Court on 28.11.2017 and 29.11.2017 to have their handwriting expert examine the disputed documents and take photographs.

10. After nearly ten (10) months, the Petitioners filed an application (5th) dated 04.09.2018 under Section 151 of CPC, seeking leave to permit the handwriting expert, Sh. Deepak Jain, to take photographs of the disputed documents (i.e., Ex. CW-1/A and Ex. CW-1/C) and the admitted documents i.e., Power of Attorney, for the purpose of comparing the signatures of late Sh. Inder Raj Kapoor.

10.1. During the course of arguments, the Petitioners contended that they are also seeking an opinion of the handwriting expert, Mr. Deepak Jain, on the aspect whether the typing fonts and/or the typewriter used in the disputed document is one and the same.

10.2. The Trial Court vide order dated 03.10.2018 dismissed the said application and closed the evidence of the defendant nos. 1 to 4, holding that on perusal of the record, it is apparent that the defendant nos. 1 to 4 were



delaying the trial. The relevant finding of the Trial Court in this regard reads as under:

“4. For the last nearly two years, D-1 to D-4 are agitating the very same issue repeatedly by filing one application after the other. At the cost of repetition it is stated that the order dated 08.12.2016 of Ld. Predecessor of this Court has not been varied or modified in any manner. This Order dt. 08.12.2016 has neither been challenged before any higher forum. D-1 to D-4 are merely trying to test the patience of this Court in agitating the very same issue over and over again. Repeated orders reiterating the order dt. 08.12.2016, on the application of D-1 to D-4 one after the other, does not seem to make any impression on them. Not only this, cost of Rs. 10,000/- has not been paid. Several applications were filed one after the other for waiver of cost. There is absolutely no question of allowing this application under consideration. D-1 to D-4 merely seem to be delaying the present proceedings which is more than 10 years old. This Court hereby looking into the conduct of D-1 to D-4 directs that their evidence stands closed hereby.”

(Emphasis Supplied)

11. The Petitioners, however being unaffected by the aforesaid findings of the Trial Court, filed an application on 20.02.2019 under Order 47 Rule (1)(b) read with Section 114/151 of CPC for review of the order dated 03.10.2018. The said application seeking review has been dismissed by the Trial Court *vide* impugned order dated 02.08.2022.

12. The aforesaid narration of facts shows that the Petitioners herein were granted permission by the Trial Court to have the disputed documents examined by their handwriting expert *vide* the orders dated 08.12.2016, 01.11.2017, 28.11.2017 and 29.11.2017; however, the Petitioners wilfully failed to lead any evidence.

13. In the meantime, defendant nos. 5 to 8 as well lead evidence and concluded the same and now the matter is listed for final arguments before the Trial Court. The civil suit was instituted on 24.07.2008 and has been pending final adjudication for fifteen (15) years.

Arguments of the parties



14. The learned counsel for the Petitioners states that he relies upon the judgment of the Supreme Court in *State (through CBI) Vs. S.J. Choudhary, (1996) 2 SCC 428*, to contend that the handwriting expert is competent to opine on the similarity and dissimilarity in the fonts used in typewriting likewise a handwriting.

14.1. He states that the Petitioners have till date not lead the evidence of the hand writing expert, permission whereof was granted to them as early as on 08.12.2016 as the Petitioners were not granted permission to lead the evidence of the hand writing expert on the issue of the typing fonts or the typewriter as well.

15. In response, the learned counsel for the Respondent nos. 2 to 4 states that he represents defendant nos. 5 to 8 before the Trial Court. He states that the evidence of the defendant nos. 5 to 8 has been recorded and stands closed in the year 2022; and in fact, the right to lead evidence of the Petitioners herein i.e., defendant nos. 1 to 4 was closed on 03.10.2018.

16. In reply, the learned counsel for the Respondent No. 1 states that as noted above, the evidence of the defendants stand closed and the matter is now listed for final arguments before the Trial Court on 11.08.2023. In this regard, she relies upon the orders dated 08.12.2016, 20.04.2017, 01.11.2017 and 28.11.2017 illustratively, to contend that the Trial Court repeatedly granted opportunities to the Petitioners herein to lead evidence of the handwriting expert, and prove their defense with respect to the disputed documents.

16.1. She states however, despite repeated opportunities granted by the Trial Court, the Petitioners herein have elected to not lead the evidence of handwriting expert. She states that the Court *vide* order dated 08.12.2016 and



28.11.2017 permitted the Petitioners to take inspection of the disputed documents however, for reasons best known to the Petitioners, the said opportunity has not been availed.

16.2. She states now that the matter is listed for the final arguments; the present petition which seeks permission to lead the evidence of the expert cannot be allowed. She further states that the challenge to the impugned order in effect seeks to reopen the Trial Court's order dated 03.10.2018, which has become final. He states that the present petition is barred by limitation insofar as it seeks to indirectly impugn the order dated 03.10.2018.

17. This Court has considered the submissions of the counsel for the parties and perused the record.

18. The relevant orders of the Trial Court adjudicating the application of the Petitioners for leading evidence of the expert had been set out in detail in the initial part of this judgment. The Trial Court vide orders dated 08.12.2016, 01.11.2017, 28.11.2017 and 29.11.2017 repeatedly granted permission to the Petitioners to lead evidence of the handwriting expert.

19. The right of the Petitioners herein to lead their evidence was closed by the Trial Court on 03.10.2018, which order became final.

20. The Petitioners herein filed an application seeking review of the orders dated 03.10.2018 on 02.08.2022, four (4) years after their evidence was closed and the matter was at the stage of the final arguments.

21. This Court has perused the orders dated 01.12.2016, 01.11.2017, 28.11.2017 and 29.11.2017, whereby the Trial Court repeatedly granted opportunity to the Petitioners herein to take photographs of the disputed documents and lead the evidence of the hand writing expert to substantiate the defence that the signatures of late Sh. Inder Raj Kapoor were forged on the



disputed documents as alleged.

22. The Petitioners herein have however, withheld the evidence of the handwriting expert, Mr. Deepak Jain and elected to not lead any evidence at all.

23. In the meantime, defendant nos. 5 to 8 (i.e., Respondent nos. 2 to 4) have also concluded their evidence between the year 2018 and 2022.

24. This Court, therefore, finds that there is no infirmity in the order of the Trial Court dismissing the review application filed belatedly after four (4) years to seek a review of the order dated 03.10.2018. The ingenuity of the Petitioners in seeking to challenge the orders dated 08.12.2016 and 03.10.2018 by filing a review in the year 2022 is a sheer abuse of process of law. The Trial Court has granted sufficient opportunities to lead their evidence and therefore, there has been due compliance of principles of natural justice in the trial proceedings.

25. During the course of arguments, the learned counsel for the Petitioners contended that he does not press for reliefs sought in the review application and instead prays that the disputed documents be sent to CFSL by this Court.

25.1. This submission of the Petitioners is without any merits. The application seeking direction to have the documents examined from CFSL was considered and rejected by the Trial Court *vide* order dated 20.04.2017. The said order has become final and is not a subject matter of challenge in this petition.

26. This Court therefore, gets an impression that the Petitioners are raising these pleas to stall the final arguments. The present petition is therefore clearly, intended to delay the final adjudication of the suit.

27. This Court, therefore, in the facts of this case finds no ground to

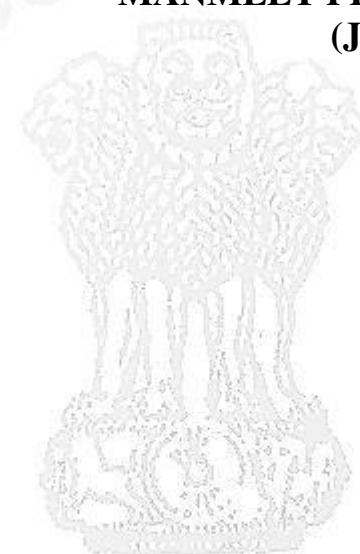


interfere in the impugned orders dated 08.12.2016 and 03.10.2018, wherein the challenge has been made after six (6) years and four (4) years respectively. The challenge to the impugned order dated 02.08.2022 is merely a camouflage to reopen the orders dated 08.12.2016 and 03.10.2018.

28. This petition is without any merit and is accordingly dismissed. Pending applications, if any, are also disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

JULY 31, 2023/hp/aa



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