

REVISIONAL CIVIL

Before B. S. Dhillon and M. R. Sharma, JJ.

GURU NANAK CONSTRUCTION COMPANY,—*Petitioner.*

versus

M/S. JAI BHARAT STEEL ROLLING MILLS,—*Respondent*

Civil Revision No. 236 of 1976.

May 7, 1976.

Evidence Act (1 of 1872)—Sections 45 and 73—Code of Civil Procedure (V of 1908)—Order 3, Rule 1—Proviso—Direction to a party to furnish specimen signatures for comparison with disputed ones—Court—Whether competent to give such direction.

Held. that the opinions of the Expert Witnesses become relevant when the identity of handwriting or signatures is in dispute. Section 73 of the Evidence Act 1872 empowers the Court to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words, or figures so written with any words or figures alleged to have been written by such person. The earlier part of section 73 provides that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. This would show that in order to adjudicate upon the disputed signatures, writing or seal, any signature, writing or seal, admitted or proved to the satisfaction of the Court, to have been written or made by that person, can be compared with the disputed ones. The Court has, thus been empowered to direct any person to give specimen signatures or handwriting with a view to get the same compared with the disputed ones. This power may be exercised by the Court for its own satisfaction or even on an application being made by any party to the proceedings. The power under section 73 of the Act can be exercised for issuing directions to any person present in Court. The proviso to Order 3, Rule 1 of the Code of Civil Procedure, provides that though a party is appearing by a recognised agent or by a pleader in a case, the Court can always direct a party to appear in Court in person when the need arises. Therefore, the combined reading of proviso to Order 3, Rule 1 of the Code of Civil Procedure, and sections 45 and 73 of the Indian Evidence Act, makes it abundantly clear that in a proper case the Court has got power to direct the person concerned to appear and give his signatures and handwriting so that the comparison can be made

in order to arrive at the correct conclusion as to whether the disputed documents were signed or written by the person who denied to have done so. (Paras 6 and 7).

Petition under Section 115 C.P.C. for revision of the order of Shri Gurdial Singh, PCS, Senior Sub Judge, Bhatinda, dated the 19th day of November, 1975, allowing the application of the plaintiff and ordering that Mohinder Singh shall appear on 5th December, 1975 on which date he shall give his specimen hand-writing and signatures for the purposes of comparison with his signatures purporting on some of the documents sought to be put in evidence by the plaintiffs.

Jagdish Rai Mittal, Advocate, for the Petitioner.

P. C. Mehta Advocate, for the Respondents.

JUDGMENT

B. S. Dhillon, J.

(1) Petitioner firm is the defendant in the suit filed by the the respondent firm. This suit is being tried in the Court of the Senior Sub-Judge, Bhatinda. The plaintiff-firm applied for a Court direction to Shri Mohinder Singh, partner of the defendant firm to appear in Court and to give his specimen writing and signatures for comparison thereof with his purported signatures on some documents sought to be put in evidence. This comparison, according to the plaintiff firm, is essential for the evidence of the Expert Witness. This prayer was opposed by the defendant. The learned Senior Sub-Judge, *vide* the impugned order dated November 19, 1975, allowed the prayer of the plaintiff and directed Mohinder Singh to appear in Court on December 5, 1975, to give his specimen writing and signatures for the purpose of comparison with his signatures purported to be on some of the documents sought to be put in evidence by the plaintiff. This order of the learned Senior Sub-Judge has been impugned in this revision petition.

(2) When this petition came up for hearing before S. S. Sandhawalia J., his Lordship admitted the petition to D. B. in view of the conflict of opinion regarding the interpretation of the provisions of sections 45 and 73 of the Indian Evidence Act (Act No. 1 of 1872) (hereinafter referred to as the Act.) between various High Courts and there being no authoritative decision by this Court.

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(3) We have heard the learned counsel for the parties and are of the opinion that there is no merit in this petition. The short question which falls for determination in this case, is as to whether the Court has got power under the provisions of the Evidence Act to direct a party to furnish specimen writing or signatures for the purpose of comparison by an Hand Writing Expert, who may be produced in Court to prove or disprove the signatures on the disputed documents. The provisions of sections 45 and 73 of the Act are relevant for considering the question in hand, which are reproduced as under :—

“45. *Opinions of Experts.*—When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called Experts.

73. *Comparison of signature, writing or seal with others admitted or proved.*—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(4) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(5) This action applies also, with any necessary modifications, to finger impressions.”

(6) From the above referred to provisions, it is clear that the opinions of the Expert Witnesses become relevant when the identity of handwriting or signatures is in dispute. Section 73 of the Act empowers the Court to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures

alleged to have been written by such person. The earlier part of provisions of section 73 provides that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. This would show that in order to adjudicate upon the disputed signatures, writing or seal, any signature, writing or seal, admitted or proved to the satisfaction of the Court, to have been written or made by that person, can be compared with the disputed ones. It is in this back ground that the Court has been given power to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. In our considered opinion, the bare reading of both these provisions show that the Court has been empowered to direct any person to give specimen signatures or handwriting with a view to get the same compared with the disputed ones. This power may be exercised by the Court for its own satisfaction or even on an application being made by any party to the proceedings. If these sections are interpreted to mean that this can only be done by the Court for its own satisfaction, that would be perpetuate injustice. In that case persons who may have written or signed valuable documents and on mere denial on their behalf about the said documents having been signed or written, would render the aggrieved party without the remedy of getting the disputed signatures or writing compared and proved to the satisfaction of the Court that the said documents were signed or written by the defaulting party. The provisions have to be interpreted so as to give the fullest meaning with a view to do justice between the parties. When a dispute regarding the signatures or writing on a document is before the Court, it is always the endeavour of the Court to reach at the correct conclusion and without this power having been exercised, whether *suo motu* or at the instance of the aggrieved party, the decision on these matters, is likely to be made without the assistance of the experts inspite of such expert's evidence having been made relevant under the provisions of section 45 of the Act.

(7) The power under section 73 of the Act can be exercised for issuing directions to any person present in Court. The proviso to Order 3, Rule 1 of the Code of Civil Procedure, provides that though

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a party is appearing by a recognised agent or by a pleader in a case, the Court can always direct party to appear in Court in person when the need arises. Therefore, the combined reading of proviso to Order 3, Rule 1 of the Code of Civil Procedure, and sections 45 and 73 of the Indian Evidence Act, makes it abundantly clear that in a proper case the Court has got power to direct the person concerned to appear and give his signatures and handwriting so that the comparison can be made in order to arrive at the correct conclusion as to whether the disputed documents were signed or written by the person who denied to have done so. Similar view has been taken in *M. Narayana-swami v. Yangatanna*, (1).

(8) We are inclined to disagree with the view taken by the Gujrat High Court in *Babubhai Mulchanddas Kapadia v. Ishwarlal Devchand Kabrawala*, (2). With due respect to the learned Judge, he has not made any reference to the provisions of section 45 of the Evidence Act or to the proviso to Order 3, Rule 1 of the Code of Civil Procedure while considering the issue in hand.

(9) The only other authorities relied upon by the learned counsel for the petitioner are *Dharamvir Singh v. State*, (3), and *T. Subbiah v. S. K. D. Ramaswamy Nadar*, (4). The said authorities are of no assistance to the learned counsel for the simple reason that those were cases in which it was held that the accused could not be compelled to give the specimen signatures or writing because any such direction would contravene the provisions of Article 20(3) of the Constitution of India. The said authorities are, therefore, of no application to the question in issue.

(10) For the reasons recorded above, there is no merit in this petition and the same is hereby dismissed with no order as to costs.

H. S. B.

(1) A.I.R. 1975 Andhra Pradesh 88.

(2) A.I.R. 1975 Gujrat 95.

(3) 1975 Current Law Journal 132.

(4) A.I.R. 1970 Madras 85.