

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 14th July, 2021**

Pronounced on: 10th August, 2021

+ **CM (M) 462/2020, CM APPL.23147/2020 (by the petitioner u/S 151 CPC for ad-interim ex-parte stay)**

ASHOK KUMAR MALHOTRAPetitioner
Through: Mr. Vijay Kinger, Advocate

Versus

SUNIL TULIRespondent
Through: Mr. Satish Sharma, Advocate

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

1. This petition under Article 227 of the Constitution of India has been filed by the defendant in Suit No. 553/2017 against the order of the learned Trial Court dated 18th August, 2020, whereby it dismissed the application under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (“CPC”, for short), moved by the petitioner/defendant, for re-opening of evidence, recalling witnesses and directions to the respondent/plaintiff to submit documents for comparison of signatures.

2. The respondent/plaintiff had filed the suit for possession, permanent injunction and recovery of arrears of rent and mesne

profits/damages against the petitioner/defendant. The trial was at the stage of defendant's evidence, the respondent/plaintiff having led his evidence, when the petitioner/defendant moved an application seeking comparison of the signatures on a receipt dated 4th September, 2005 with the admitted contemporaneous signatures of the respondent/plaintiff. That application was allowed vide orders of the learned Trial Court dated 22nd December, 2018. The defendant's evidence was closed on 22nd March, 2019 and the FSL report was awaited for on 27th April, 2019. The FSL report was inconclusive and sought more documents for comparison.

3. The application under Section 151 CPC moved for re-opening defendant's evidence was dismissed as was the request for directions to the respondent/plaintiff to submit more documents for effective comparison.

4. Mr. Vijay Kinger, learned counsel for the petitioner/defendant submitted that the learned Trial Court had discussed the entire merits of the defence raised by him due to which the petitioner/defendant has been greatly prejudiced. Particularly, as he had filed CS No.358/2020 for specific performance, in which the present responder/plaintiff has already been proceeded ex parte. It is claimed that the petitioner/defendant had been educated upto the 6th/7th class and was beguiled into signing papers, which are now being claimed to be registered Lease Deeds. The petitioner/defendant has been in possession uninterruptedly since 2005 and had paid Rs.3 lakhs out of a consideration of Rs.4 lakhs for the suit property. In the circumstances, the petitioner/defendant should be allowed to examine the witness.

5. Mr. Satish Sharma, learned counsel for the respondent/plaintiff, however, contended that there were three registered Lease Deeds which established that he was the landlord and the petitioner/defendant the tenant, in the suit premises. In contrast, on the basis of an unregistered receipt, the petitioner/defendant was claiming ownership of the premises. The respondent/plaintiff had submitted contemporaneous documents dating to 2005, which the expert did not find to be sufficient for comparison. That was not the fault of the respondent/plaintiff. Learned counsel submitted that there were no other documents of that period available with him. The learned Trial Court rightly rejected the applications and the present petition was also liable to be dismissed. According to the learned counsel for the respondent/plaintiff, the suit was liable to be decreed straightaway in his favour.

6. The digital copies of the Trial Court Records have been attached to the E-file of this petition. The order-sheets are relevant in determining whether the impugned order suffers from some error. It is to be noted that on 22nd December, 2018, the learned counsel for the petitioner/defendant informed the court that only two witnesses were to be examined on his behalf. DW-1 was examined on that day. DW-2 was examined on 21st January, 2019. On that day, on an application being moved in this behalf by him, the petitioner/defendant was permitted to examine one Gaurav Lamba. But, on 22nd March, 2019, that witness was dropped by the learned counsel for the petitioner/defendant. A perusal of the application under Section 151 CPC, which was also for summoning of witness, makes no disclosure of who was the witness sought to be examined.

There is no such disclosure before this Court either. So, the rejection of that part of the prayer, seems quite justified.

7. As regards the prayer for directions to the respondent/plaintiff to produce more documents for comparison, there is no merit in the same. The learned Trial Court had allowed vide orders dated 22nd December, 2018, the application moved by the petitioner/defendant under Section 45 of the Evidence Act, 1872. On 8th February, 2019, the respondent/plaintiff had given his specimen signatures in the Court and had handed over the original Partnership Deed bearing his signatures, which were then forwarded to the FSL for comparison. If these were found insufficient to come to any conclusion, there would be no purpose in sending other documents, even if now available with the respondent/plaintiff at this distant point in time, for further comparison.

8. The learned Trial Court was right in observing that expert evidence is merely an opinion. The court is not precluded from making a comparison of its own, if so required, to come to a conclusion. Therefore, while it is true that the learned Trial Court could have refrained from commenting on the evidentiary value of the receipt, the same appears to be apropos to the arguments submitted before it. Nevertheless, it is apparent that it has not taken a final view, as the impugned order records that the evidentiary value of the receipt would be seen as per law and the evidence already recorded. This Court refrains from commenting on the merits of the case, even though the learned counsel have touched upon it in the course of their submissions and judgements relied on behalf of the respondent/plaintiff.

9. There is no merit in the present petition. The same is accordingly dismissed along with the pending application.

10. The judgment be uploaded on the website forthwith.

**(ASHA MENON)
JUDGE**

AUGUST 10, 2021
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