

**Commercial Properties and Merchandise Ltd. Vs. Pallab Roy**

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**SooperKanoon Citation :** [sooperkanoon.com/110233](http://sooperkanoon.com/110233)

**Court :** Kolkata

**Decided On :** Jun-07-2017

**Judge :** Sahidullah Munshi

**Appellant :** Commercial Properties and Merchandise Ltd.

**Respondent :** Pallab Roy

**Judgement :**

ORDER

SHEET GA1686of 2017 With CS259of 2007 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE COMMERCIAL PROPERTIES & MERCHANDISE LTD.Versus PALLAB ROY BEFORE: The Hon'ble JUSTICE SAHIDULLAH MUNSHI Date : 7th June, 2017.

Appearance: Mr.Uday Chandra Jha, Adv.Ms.Maheswari Sharma, Adv.For Opp.

Party The Court: None appears for the petitioner plaintiff.

This GA No.1686 of 2017 at the instance of the plaintiff with a prayer for appointment of Handwriting Expert for submission of opinion as to the identity of handwriting appearing in Exhibit C upon comparison of such handwriting and the handwriting appearing in Exhibit Y and Y/1 and other sample handwriting of Prasanta Kumar Roy, the father of the defendant, was heard at length and is listed today for passing necessary orders on the said application.

The suit is one with a prayer for specific performance in terms of the draft deed of lease being Annexure B in the plaint.

The said draft deed of agreement has also been annexed to the present application being Annexure B at page 138 of the petition.

It is the case made out by the plaintiff in the plaint that the terms embodied in the said deed of modification of the terms of lease were corrected by the defendants father.

Therefore, the handwriting in which the corrections were so made at page 8 to 13 of the said draft deed of modification is to be verified with the admitted signature of the defendants father, Prasanta Kumar Roy, who is not a party to the present suit.

According to the petitioner, whatever corrections have been made in the said draft deed of modification of lease deed, are in the handwriting of the said Prasanta Kumar Roy and according to the petitioner, if page 8 to 13 are sent before the Handwriting Expert to compare the same with the admitted signature of the said Prasanta Kumar Roy appearing at page 154 of the petition, it will be borne out that the corrections so made in the said draft modification deed, is of none else but of the defendants father Prasanta Kumar Roy.

Mr.Ghosh, learned Counsel appearing for the petitioner drew this Courts attention to question nos.137 and 140 at page 47 of the petition to show that the plaintiff identified the document to have been corrected by Prasanta Kumar Roy on the basis of which some other deed was prepared on 27th August, 1996.

The plaintiff-petitioner wants to prove the handwriting of Prasanta Kumar Roy in the said draft deed of modification at page 138 after comparing with the admitted signature of the defendants father at page 154.

Defendant is represented by Mr.Jha, learned counsel but no opposition has been filed.

Mr.Jha for the defendant vehemently opposed the submissions made by the learned Counsel for the petitioner.

He submitted that there has to be some relevancy of fact for which the plaintiff-petitioner can make a prayer before the Court for comparison of the handwriting on the said purported document with that of the contents of the letter dated 29th May, 2002.

He submitted that contents of the letter dated 29th May, 2002 containing alleged signature of Prasanta Kumar Roy has no nexus with that of the said purported draft deed of modification.

Therefore, according to him if the fact is not relevant to the subject, question of proving the handwriting of the defendants father cannot arise.

I have considered the rival contentions made by the parties.

I have gone through the pleadings and other documents on record.

The only contention of the petitioner is that since he has based his claim in the plaint on the draft modification deed, therefore, corrections made by the person is to be identified by the opinion of Handwriting Expert.

In the plaint it has been categorically mentioned that the handwriting and the corrections are of the defendants father.

Even if we assume that the defendant has admitted that those corrections have been made by his father whether it will be in aid of grant of specific performance to the plaintiff where he has made a prayer for specific performance against the defendant but not his father and particularly when it is admitted that if at all anyone has any right to create any interest in favour of the plaintiff in respect of the suit property, he is not the father of the defendant, but the defendant himself.

Therefore, on this aspect it will be a futile exercise by the Court to call for Handwriting Expert to prove the handwriting appearing in the said draft deed.

Parties cannot be allowed to misuse the power of the Court.

Provisions of Section 45 of the Evidence Act is to be applied in a just and proper case but not everywhere.

Merely because there is some suspicion about the handwriting of a person the same is required to be proved by appointment of a Handwriting Expert, is not the object of Section 45 of Indian Evidence Act.

Section 45 of the Indian Evidence Act is set out below : S.45.

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. Provisions of Section 45 of the Evidence Act are not applicable in the present

case having regard to the statements made by the defendant in the written statement particularly in paragraphs 11 and 12 thereof.

In paragraphs 11 and 12 of the written statement the defendant has pleaded that 11.

the fact is that plaintiff company has proposed to the father of the defendant for obtaining a fresh lease before expiry of period in the lease deed dated 2nd February, 1909 and, accordingly, the defendants father has consulted the learned senior advocate Mr.Animesh Kanti Ghoshal for obtaining an opinion whether before the expiry of the said lease is it advisable to execute a fresh lease deed. 12.

the defendant has never participated in the said discussion as he was not willing to extend any further period of lease on any terms. There was never a talk between the plaintiffs representative and Mr.Prasanta Kumar Roy, the father of the defendant but there was no concluded contract between the plaintiff and the defendant and no consideration was based on such alleged agreement.

The plaintiff never negotiated with the defendant for the purpose of executing a further lease as alleged by the plaintiff and the defendant never intended to execute further lease deed in favour of the plaintiff as alleged by the plaintiff. Therefore, the defendant categorically denies the statements and/or allegations contained in paragraphs 12, 13, 14, 15, 16, 17 and 18 of the plaint.

The defendant denies in particular that on 10th August, 1996 the plaintiff, through his lawyer, caused a draft lease deed to be prepared and the same was forwarded to the defendant and his father, Prasanta Kumar Roy, and at the request of the defendant the said draft lease was thereafter, sent to Animesh Kanti Ghoshal, Advocate of the defendant.

From the above statements made by the defendant in the written statement it is clear that at no point of time the defendant had admitted in any manner that the father of the defendant was entrusted with regard to the alleged settlement of the draft deed of modification as alleged by the plaintiff.

The plaintiff has not taken any steps to produce any other independent witness to show that such an occasion arose that the plaintiff entrusted his father to have consultation with an advocate for the purpose of extension of the lease.

Nobody has deposed in the box that he saw the father of the defendant to make corrections over the alleged draft lease deed, nor the defendant has given any hint that there was any such occasion where the defendants father had an occasion to be a party in the discussion on the issue of extension of lease with the named advocate.

Therefore, simply because the defendant has admitted the signature of his father, there is absolutely no reason to allow the prayer of the plaintiff to compare the handwriting in the document with that of the admitted signature of the defendants father.

This Court is of the view that such an attempt on the part of the plaintiff is nothing but to drag the proceeding unnecessarily.

The father of the defendant is in no way involved in the suit and he has no right to grant any extension even if any such correction has been made and the same has got no bearing upon the facts of the present case.

That being so, this Court is not at all convinced to allow the prayer of the petitioner to send the handwriting to an expert for its comparison with that of the admitted signature of the defendants father.

In my view, Section 45 has no application in the present case as pleaded by the petitioner rather in the facts and circumstances of the present case provisions of Section 47 have got some application which says that when the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or

signed that it was or was not written or signed by that person may be a relevant fact.

Explanation to Section 47 says that a person is said to be acquainted with the signature of any person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority or addressed to that person, or when, in the ordinary course of business documents purporting to be written by that person have been habitually submitted by him.

Section 47 indicates that a handwriting of a person may be proved by the evidence of the writer himself or by the evidence of a person who has seen the person, whose handwriting is in question, write or by the evidence of a person acquainted with such handwriting, either by receiving letters purporting to be written by the person in answer to documents written by the witness, or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

In the present case, the writer has not come before the Court, nor has been cited as a witness.

No person has been cited as witness who has either seen the father of the defendant to make corrections in his own handwriting, nor any person has been cited as a witness who is acquainted with the handwriting of the defendant's father.

In such circumstances, this Court does not deem it appropriate to hold that the plaintiff's approach for comparing those disputed handwritings with the admitted signature of the father of the defendant by a Handwriting Expert in order to prove that those writings are of the defendant's father.

However, the fact that whether the writings are of the father of the defendant or not, is not at all relevant in the present issue and, therefore, this Court is not inclined to allow the prayer of the petitioner and the application is, therefore, rejected.

(SAHIDULLAH MUNSHI, J.) sp3

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