

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

MISC. PETITION No. 4309 of 2021

BETWEEN:-

**SUBHASH JAGIRDAR S/O LATE
CHANDRASENRAO JAGIRDAR, AGED
ABOUT 56 YEARS, OCCUPATION:
AGRICULTURE VILL-TILLORE KHURD
(MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI ASHOK KUMAR SETHI, SENIOR ADVOCATE WITH SHRI
ASHUTOSH NIMGAONKAR, ADVOCATE)***

AND

- 1. NANDKISHORE S/O RAMKISHAN
PATIDAR, AGED ABOUT 68 YEARS,
OCCUPATION: AGRICULTURE VILL-
TILLOR KHURD (MADHYA PRADESH)**
- 2. HARINARAYAN S/O RAMKISHAN
PATIDAR, AGED ABOUT 63 YEARS,
OCCUPATION: AGRICULTURE VILLAGE
TILLOR KHURD TEHSIL AND DIST
INDORE (MADHYA PRADESH)**
- 3. M/S ASHIRWAD SKYHEIGHTS TOWERS
PRIVATE LIMITED THROUGH ITS
DIRECTOR MAHENDRA SINGH S/O
HARPATSINGH REGISTERED OFFICE
SOCIETY NO. 75 SARDAR VALLABH BHAI
PATEL MARG, MHADA ANDHRI WEST
MUMBAI (MAH) R/O E-14, SCHEME NO. 54**

VIJAY NAGAR INDORE (MADHYA
PRADESH)

STATE OF M.P. THR COLLECTOR
4. SATELLITE BUILDING MOTI TABELA
INDORE (MADHYA PRADESH)

....RESPONDENTS

*(RESPONDENTS NO.1 & 2 BY SHRI VEER KUMAR JAIN, SENIOR
ADVOCATE WITH SHRI VAIBHAV BHAGWAT – ADVOCATE AND
RESPONDENT NO.3 BY SHRI VINAY SARAF, SENIOR ADVOCATE WITH
SHRI RISHI SHRIVASTAVA - ADVOCATE)*

.....
Reserved on : 18.01.2023

Pronounced on : 21.04.2023
.....

*This petition having been heard and reserved for orders, coming
on for pronouncement this day, the court passed the following:*

ORDER

1. By this petition preferred under Article 227 of the Constitution of India the petitioner/defendant No.1 has challenged the order dated 27.10.2021 passed in Civil Suit No.200054A/2016 by the 11th Additional District Judge, Indore whereby his application under Section 45 of the Evidence Act for examination of signatures of plaintiffs/respondents 1 and 2 on the questioned document has been rejected.

2. The facts in brief are that on 15.06.2009 the plaintiffs instituted

an action for declaration that the sale deed dated 31.03.2008 executed by defendant No.1 in favour of defendant No.2 on strength of forged and fabricated power of attorney dated 23.03.2008 alleged executed by them in favour of defendant No.1 is null and void and for permanent injunction restraining the defendants from interfering with their possession over the suit land. The claim has been contested by defendant No.1 by filing his written statement to the same.

3. On 05.10.2017 the defendant No.1 filed an application under Section 45 of the Evidence Act for examination of signatures and thumb impressions of plaintiffs on the agreement to sale dated 14.08.1996, power of attorney dated 06.11.1996 and Sahamati Patra dated 22.11.2007 by a hand writing expert with the documents available on record containing the signatures of plaintiffs. The application was contested by the plaintiffs and has been rejected by the trial Court by the impugned order on the ground that the same has been filed after closure of evidence of defendant No.1 and 2 and after submission of report of hand writing expert appointed at the behest of plaintiffs. It has further observed that a report of hand writing expert prepared prior to filing of the suit is already available on record and during pendency of the suit also another report on the questioned documents has been received, hence there is no requirement of any further report of hand writing expert.

4. Learned counsel for the defendant No.1/petitioner submits that

the trial court has erred in rejecting the application filed by him. There was no delay in filing the same. The application was filed on 05.10.2017 reply to which was filed by plaintiffs on 20.10.2017 whereas the same was eventually decided on 27.10.2021 i.e. after a period of almost 4 years for which defendant No.1 cannot be blamed. Similar application filed by plaintiffs was also allowed by the trial Court by order dated 04.08.2015 after closure of evidence of the parties hence for maintaining parity defendant No.1 also should have been granted opportunity to seek report of a hand writing expert. The trial Court has adopted dual standards in the matter by allowing the application of plaintiffs in same fact situation and rejecting the application of defendant No.1. The report filed by the hand writing expert on the application of plaintiffs having been allowed by the trial Court is already subject matter of cross-examination hence the stage of the suit is not where defendant No.1 could not have been permitted to seek his own report of hand writing expert. On 09.11.2021 plaintiffs have already filed an affidavit in evidence hence the stage of the suit is where allowing of application of defendant No.1 would not cause any delay in the trial or prejudice to the plaintiffs. It is hence submitted that the application filed by defendant No.1 ought to have been allowed. Reliance has been placed by him on the decision of this Court in **Chenram S/o Parasramji Patidar V/s. Banshilal S/o Radhakishanji Suthar 2017 (3) MPLJ 592** and **Nandu @ Gandharva Singh V/s.**

Ratiram Yadav and Others 2019 (3) MPLJ 296.

5. Per contra learned counsel for plaintiffs/respondents 1 and 2 has submitted that the application filed by defendant No.1 was extremely belated and has rightly been rejected by the trial Court. The evidence of plaintiffs had been completed on 18.07.2014 after which evidence of defendants was also completed. The application under consideration was however filed by defendant No.1 on 05.10.2017. No right was reserved by defendant No.1 in that regard. After closure of evidence, plaintiffs were allowed permission to lead evidence on issues reserved by the trial Court itself for a later stage. It is only at that stage plaintiffs filed application for appointment of a hand writing expert which was allowed by the trial Court. There is hence no parity as regards the application filed by plaintiffs and that filed by defendant No.1 which have been filed under absolutely different fact situation. Defendant No.1 had himself opposed the application filed by plaintiffs for appointment of hand writing expert on the ground that a report is already available on record hence now cannot claim such a relief himself. The appointment of hand writing expert at the instance of plaintiffs was never challenged by defendant No.1, who hence cannot seek appointment of his own handwriting expert. The report received in the Court pursuant to allowing of application of plaintiffs would be a report of the Court and not a private report of plaintiffs hence no more report on the very same issue is required. It is only because the report

submitted by the hand writing expert is against defendant No.1 that he has sought for appointment of his own hand writing expert. The petition hence deserves to be dismissed

6. I have heard learned counsel for the parties and have perused the record.

7. The report of the hand writing expert namely of Shri Tuteja which was filed by plaintiffs at the time of filing of the plaint was prior in point of time to filing of suit. The same was hence a report at the instance of plaintiffs and was not a report of the Court. The evidence of plaintiffs was closed on 18.07.2014 after which defendant's evidence was also completed and closed. Thereafter plaintiffs filed an application under Section 45 of the Evidence Act for appointment of a hand writing expert in respect of the questioned documents which was allowed by the trial Court on 04.08.2015 pursuant to which report of the hand writing expert has been received in the Court on which cross-examination has been conducted. Since the said report was upon allowing of an application filed by plaintiffs in that regard, the same cannot be said to be a report of the Court but would be a report received at the instance of plaintiffs.

8. Since at the instance of plaintiffs a report of a hand writing expert was requisitioned, which is not a report of the Court, on the ground of parity defendant No.1 is also entitled for seeking such a report from his own hand writing expert even though the report submitted by the hand

writing expert on allowing of application of plaintiffs may be against him.

9. The application of plaintiffs for appointment of a hand writing expert was allowed by the trial Court after closure of evidence hence it is not open for plaintiffs to contend that the application filed by defendant No.1 is belated the same having been filed after closure of evidence of the parties nor could have the trial Court held so. The application was filed by defendant No.1 on 05.10.2017 and reply to the same was filed by plaintiffs on 20.10.2017 whereas the same has been decided only on 27.10.2021 hence for all this period the delay is on part of the trial Court and not on part of defendant No.1 who hence cannot be blamed for the same. The entire proceedings do not reflect any deliberate delay on part of defendant No.1 in filing the application under consideration.

10. Only for the reason that cross-examination on report obtained at the instance of plaintiffs is in progress and as per defendant No.1 the said report is against him, he cannot be denied the opportunity of seeking a fresh report of the hand writing expert at his instance. Moreover it is seen that on 09.11.2021 an affidavit in evidence of plaintiff's witness has been filed on which cross-examination is to be conducted. The suit has hence not reached a stage where it can be said that the proceedings have been concluded. Merely because there is a report of the hand writing expert filed along with the plaint it would not

preclude defendant No.1 from seeking a report at his own instance nor was it necessary for him to have reserved any such right at the time when plaintiff's application for the same purpose was allowed.

11. Though defendant No.1 had opposed the application filed by plaintiffs on the ground that a report is already on record but the fact remains that such objection was not entertained by the trial Court which allowed application of plaintiffs. Since objection of defendant No.1 as above was negated, it did not preclude him from filing his own application despite the fact that such a report was filed along with the plaint. It was not necessary for defendant No.1 to have challenged the appointment of handwriting expert at the instance of plaintiffs for him to seek report of a handwriting expert of his own since he is claiming parity by contending that since plaintiffs have been permitted to obtain report of hand writing expert, he also should be permitted to do the same.

12. In **Chenram (supra)** it was held by this Court in paragraph 5 to 7 as under :-

“5. Having heard learned counsel for the parties and on perusal of the record, it is noticed that so far as the petitioner's objection to the report of handwriting expert submitted by the respondent, the trial Court has rightly held that petitioner will have opportunity to counter the same at the stage of evidence. So far as the petitioner's prayer for granting permission to obtain report of his own handwriting expert is concerned, the said issue has not been properly dealt with by the trial Court. Division Bench of this Court in the matter of *Usha Sharma (Smt.) v. Maharaj Kishan Raina*, 2010 (1) MPJR SN 22 has held as under:—

“It is true that the supervisory jurisdiction of the High Court under Article 227 of the Constitutions is limited to see that inferior Court or the Tribunal functions within the limit of the authority provided to it. However, if the function of inferior Court appears erroneous to the extent showing its working not as per the authority, then of course the hands of this Court are not closed. Proper function of the Courts working under this Court also required to be seen as has been observed by the Apex Court in the case of *Mohd. Yunus* (supra). In our considered opinion, denying desired opportunity to the petitioner for rebuttal is not justified. Particularly, in the facts and circumstances of this case, in which according to the petitioner a fraud has been played by the respondents while shaking hands with each other with regard to property belonging to her. According to her, the respondent No. 1 filed a collusive suit for specific performance against the respondent No. 2 and in Lok Adalat on compromise, the respondent No. 1 has obtained decree behind the back of the petitioner. When one party has been provided and has availed an opportunity to produce opinion of a handwriting expert in his favour, the request of the opposite party for producing the similar type of evidence in rebuttal, appears appropriate. As observed in the case of *Babulal* (supra), such a course is not prohibited by law. As per observation of this Court in the case of *Jai Narayan* (supra) the opposite party should also be allowed to adduce evidence in rebuttal under section 45 of the Indian Evidence Act. Similar view appears has been taken by the another Single Bench of this Court in case of *Rajendra Singh* (supra) which was also a petition under Article 227 of the Constitution.

The judgment cited on behalf of the respondents are with regard to Commissioner's report under Order 26 of the Civil Procedure Code. Both the provisions are different. Under Order 26 of Civil Procedure Code, commissions are to be issued for examination of witnesses, or for local investigation or scientific investigation, etc.. The present dispute is related to seeking and filing of an opinion of an expert which is admissible in evidence under section 45 of the Indian Evidence Act. If report of a particular expert, is against the interest of opposite party, on request, such opposite party also deserves to be permitted to call such report in rebuttal. No doubt some times cross examination of the expert concerned with the help of another expert, may serve the purpose, but not always. Even on the principle of natural

justice, party ought not to and cannot be denied an opportunity of the similar nature.”

6. Though the trial Court has noted the aforesaid judgment but has wrongly distinguished it on facts without considering the ratio of the said judgment. Similarly in the matter of *Jai Narayan v. Satya Narayan*, 1991 M.P.L.J. 768 : 1991 JLJ 428, this Court has held that if the defendant has adduced the handwriting expert's report in his evidence, then the plaintiff should be allowed to produce evidence in rebuttal.

7. Having regard to the aforesaid aspect of the matter, part of the order of the trial Court rejecting the petitioner's prayer for permission to obtain his own handwriting expert's report is hereby set aside and trial Court is directed to consider the said prayer afresh in accordance with law keeping in view the aforesaid judgments.”

13. In **Nandu @ Gandharva Singh (supra)** it was held in paragraph No.14 as under :-

14. It is undisputed fact that the application filed by the respondent No. 1 for getting thumb impression on the agreement examined from the handwriting expert was allowed by the trial Court and accordingly, the report of the handwriting expert has been placed on record. Under these circumstances, this Court is of the considered opinion that the trial Court cannot take away the right of the petitioner\defendant to produce the report of the handwriting expert in rebuttal of the report of the handwriting expert filed by the respondent No. 1/plaintiff. Thus, in the light of the judgment passed by the Division Bench of this Court in the case of *Usha Sharma (supra)*, this Court is of the considered opinion that the order dated 6-12-2017, so far as it relates to rejection of application under section 151 of Civil Procedure Code, is hereby set aside. Accordingly, the application filed by the petitioner under section 151 of Civil Procedure Code for producing his report of the handwriting expert in rebuttal of the report of the handwriting expert filed by the respondent No. 1/plaintiff is allowed. The trial Court is directed to proceed further in accordance with law. The interim order dated 19-1-2018 is hereby recalled.

14. The fact situation of the present case is similar to the fact situation of the aforesaid decisions. Since there is a report of a hand writing expert obtained at the instance of plaintiffs, defendant No.1 has a right to obtain report of his own hand writing expert. The same would be in the nature of rebuttal to the report obtained at the instance of plaintiffs. Thus in my opinion, the application filed by defendant No.1 under Section 45 of the Evidence Act ought to have been allowed by the trial Court.

15. As a result of the aforesaid discussion, the impugned order dated 27.10.2021 passed by the trial Court cannot be sustained and is hereby set aside. The application under Section 45 of the Evidence Act dated 05.10.2017 filed by defendant No.1 stands allowed.

16. There shall be no order as to costs.

(PRANAY VERMA)
JUDGE

ns