

In the Supreme Court of Bangladesh
 High Court Division
 (Civil Revisional Jurisdiction)
 Present:

Mr. Justice Md. Emdadul Huq

Civil Revision No. 2068 of 2014.

In the matter of:

Md. Masud Haider.

.....Petitioner.

Versus.

Md. Golam Ambia (Hsarun)

.....Opposite party.

Mr. B.M. Elias, Advocate. With

Mr. Jyotirmoy Barua, Advocate.

..... For the petitioner.

Mr.Md.Abdul Haque, Advocate.

..... For the opposite party.

Heard on: 10.11.14, 12.11.14, 20.11.14, 24.11.14
 and 25.11.2014.

Judgment on: 14-1-2015.

Leave was granted and Rule was issued in this Civil Revision under section 115(4) of the Code of Civil Procedure, 1908 about sustainability of the judgment and order dated 20.02.2014 by which the learned District Judge, Mymensingh summarily rejected Civil Revision No.6 of 2014 and thereby affirmed the order dated 29.01.2014 passed by the learned Senior Assistant Judge, Mymensingh Sadar, in Other Class Suit No.396 of 2012 rejecting an application for obtaining expert opinion on certain signatures of the plaintiff.

Plaintiff's Case:

In the above noted suit opposite party Md. Golam Ambia (Harun), as plaintiff, prayed for eviction of the defendant (petitioner) as a tenant of two shops. Plaintiff claims that the shops were leased out to the defendant No.1 as a monthly tenant under a written agreement dated 01-04-2005. The

monthly rent was fixed at Tk. 1400- for the previous tenure of 3 years. Thereafter they verbally agreed to increase the monthly rent to Tk.4,500/= for the next tenure. Accordingly the defendant paid the rent for May, 2012, but defaulted in paying the rent for the subsequent months. Apart from such default, defendant No.1 has sub-let one of the shops to defendant No.2 without the consent of the plaintiff. So the plaintiff issued a legal notice to the defendant under section 106 of the Transfer of Property Act, 1882 for termination of the tenancy and finally instituted the suit.

Case of Defendant No.1:

Defendant No.1, in his written statement, admits that under a written agreement he has been a tenant under the plaintiff. However he claims that, after expiry of the second tenure of 3 years, they verbally agreed to fix the monthly rent at Tk.2800/- effective from May, 2012 and that, on 2.6.2012, he paid in cash Tk.2800/- for that month. But without delivering any receipt on that date, the plaintiff, after 2/3 days, sent a receipt of Tk.9000/-. Upon defendant's query, the plaintiff told that the figure 9000/- had been written through mistake and it would not be repeated in future. So on 03-07-2012 he paid Tk.2800/- for June 2012. But plaintiff did not deliver any receipt on the plea that he had no printed form. On the following day plaintiff demanded Tk.9000/- for June 2012 on the plea that defendant had already paid Tk.9000/- for May, 2012.

So the defendant sent the monthly rent by postal money order for the period of June to November, 2012. The plaintiff duly received the moneys so sent. Lastly the defendant has filed Rent Case No.42 of 2013 in the Court of Rent controller wherein he has been regularly depositing the rent.

Deliberation in Revision:

At the hearing of this Revision, Mr. Jyotirmoy Roy, the learned Advocate for the petitioner-defendant, submits that both the Courts below committed an error of law in rejecting the application of the defendant for expert examination, because the principal ground of the eviction prayed for by the plaintiff is the alleged default of the defendant in paying of the rent for the period of June to November 2012 and therefore plaintiff's signatures on the receipts of the money order are vital evidence for proper adjudication of the dispute.

In support of his submission the learned Advocate refers in the Case of Tarak Chandra Majhi Vs. Atahar Ali Howlader and others (13 BLT) (AD) (2005) page-03.

In reply Mr. Md. Abdul Haque, the learned Advocate for the opposite party plaintiff, submits that according to section 73 of the Evidence Act, the Court is competent to compare the disputed signatures and hand writing of the plaintiff and thereby to arrive at a proper decision.

Mr. Haque, the he learned Advocate next submits that, apart from the default of the defendant in paying the monthly rent, the plaintiff has taken other grounds for eviction, namely violation of the agreement by way of sub-leasing the shops to another person and non-payment of electricity bills and service charge and therefore adjudication of the dispute is possible without obtaining opinion of the expert on the disputed signature.

Findings and Decision in Revision.

The issue raised in this Revision is whether expert opinion should be obtained for ascertaining the alleged receipt of the monthly rent of June to November, 2012 allegedly sent by the defendant by postal money order.

Courts below rejected the application of the defendant for expert examination on the reasoning that the court can compare any disputed hand writing or signature under section 73 of the Evidence. The trial court relied on this case of Abdul Matin Chowdhury vs. Chapala Rani (37 DLR (AD) 2005).

But, as pointed out by Mr. Jyotirmoy Barua, the learned Advocate for the defendant petitioner, the view taken by the Appellate Division, in the Case of Tarak Chandra Majhi Vs. Atahar Ali Howlader and others (13 BLT) (AD) (2005) page-3, has also observed that in case of a contentious hand writing or signature, it is risky to rely on the observation of the presiding Judge and that the safe course is to obtain expert opinion.

In consideration of the facts and circumstances of the case and the above views of the apex court, I hold that expert opinion will assist the court in the proper adjudication of the dispute between the parties.

The submission of Mr. Md. Abdul Haque, the learned Advocate for the plaintiff (opposite party) with regard to certain other grounds as pleaded by the plaintiff, I hold that those other grounds are to be decided by the trial court in consideration of the evidence led by the parties, but those grounds should not deprive the defendant from obtaining the expert opinion on the alleged signatures relating to the principal ground.

The defendant has produced the original of the admitted agreement in this Court. So the disputed signatures of the plaintiff on the receipts of the money order (in original) should be compared with those in said admitted agreement.

It is noted that expert opinion is one piece of evidence and should be considered with other evidence on record.

In view of the above, I hold that the impugned Judgment is not sustainable.

In the result, the Rule is made absolute. The Judgment and order dated 20.2.2014 passed by the learned District Judge, Mymensingh in Civil Revision No.6 of 2014 and the order dated 29.01.2014 passed by the learned Senior Assistant Judge, Sadar, Mymensingh in Other Class Suit No.396 of 2012, so far it relates to rejection of the application for obtaining expert opinion, are hereby set aside.

The learned Senior Assistant Judge, Sadar, Mymensingh is directed to pass necessary orders for obtaining expert opinion on the signature of the plaintiff as appearing on the admitted agreement and those appearing in the original postal receipts of the money order.

For the above purpose, the learned Senior Assistant Judge shall, within 10 days after receipt of the copy of this judgment and order, direct the defendant No.1 to produce the said original agreement and the said original money receipts, failing which he shall proceed with the case without the expert opinion.

The learned Senior Assistant Judge shall expeditiously dispose of the Suit in accordance with law, preferably within 6 (six) months from the receipt of the copy of this Judgment.

The learned Advocate for the defendant petitioner may take back all the annexure, except the impugned, judgment by substituting photo copies thereof.

No order as to cost.

Send at once a copy of the judgment and order to the Courts below.

B.H.