

(1998) 04 GAU CK 0016**Gauhati High Court****Case No:** Civil Revision No. 453 of 1994

Gulshan Rai Jauhar

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision: April 22, 1998**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 13 Rule 1, Order 13 Rule 2, 115, 151
- Evidence Act, 1872 - Section 45
- Limitation Act, 1963 - Section 5

Citation: (1998) 2 GLT 77**Hon'ble Judges:** B.N. Singh Neelam, J**Bench:** Single Bench**Advocate:** A.K. Bhattachaiyya, K. Agarwala and N.T. Nath, for the Appellant; S.S. Sharma, D.K. Bhatra for O.P. No. 1, A.R. Banerjee, B. Choudhury for O.P. No. 8, P.C. Deka and N. Goswami for O.P. No. 6, for the Respondent**Judgement**

B.N. Singh Neelam, J.

This Civil Revision Petition is so filed by the Petitioner Gulshan Rai Jauhar who happened to be the Defendant in Money Suit (R) No. 3/1987 so pending in the Court of Assistant District Judge, Darrang, Mangaldoi against the order dated 10.8.94 passed by the said Court in the said suit, a copy of which is filed marked as Annexure-5.

2. By going through the impugned order it transpires that it relates to a petition No. 1453/94 so filed by the present Petitioner (Defendant No. 5) in which a prayer was made as to reexamine Mr. V.G.S. Bhatnagar, a Handwriting Expert to prove the grounds so taken by the said witness as to arrive at the particular opinion. The said prayer so made by the Petitioner was rejected. Hence this revision petition u/s 115/151 Code of Civil Procedure. A copy of the petition was filed as to prove the documents containing the reasons on which the opinion of Mr. Bhatnagar, the

handwriting expert was based is marked as Annexure-4. The operative portion of the impugned order thus runs as under:

.... Whatever that may be the Defendant No. 5 would have prayed for production of the document before the settlement of issues but he has not done so. The opinion of the expert is always based on reasoning. It is not known why the opinion portion was sent by the expert keeping the reasoning portion with him. If this reason is accepted at this stage Defendants 1, 2, 3, 6 and 8 would definitely be prejudiced. In civil suits one party cannot be taken the other party in surprise. Until now the Defendant No. 5 has not intimated the Defendants Nos. 1, 2, 6 and 8 that he intended to prove the reasoning portion of the expert along with the opinion. The document has been produced today all on a sudden. The contesting other party has no knowledge as to what were those reasonings. Also the question of genuineness of this document involved. The Defendant No. 5 has not explained as to why he did not make any attempt to cause that document produced earlier. The more fact that it was not within his power or possession cannot be considered as sufficient ground as he was not diligent in this regard as I pointed out hereinabove.

Considering all these the petition is rejected.

3. Challenging the impugned order detailed above Mr. A.K. Bhattacharjee, the learned Senior Counsel representing the Petitioner submits that the learned Court below while passing the order under challenge has acted in the exercise of his jurisdiction illegally and with material irregularity. In the instant case it is pointed out that the document in question (the reasoning part of the opinion of the handwriting expert) was not within the domain of the present Petitioner figuring as Defendant No. 5 in the said suit and that was also one of the reasons of not producing the document prior to the settlement of the issues. It is further pointed out that there are good numbers of reported cases to show that in certain circumstances even the prayer so made by the parties for proving certain document in issues can well be allowed at the later stage after the settlement of the issues. In support of his this contention the learned Counsel for the Petitioner has particularly referred to the provisions of Order 13, Rule 1 CPC and it is submitted that under the said provision the parties are expected to produce the documentary evidence of every description in their possession or power on which they intend to rely. But in the instant case the said document admittedly was not within the possession of the Petitioner and was also not within his power. It is also submitted that when any such document is produced to be relied upon after the settlement of issues that too in a case when the said document was not in his possession or domain in that circumstances only the person producing such document or desiring as to rely upon such document as only to show a good cause to the satisfaction of the Court for non-production of the document at an early stage and in the instant case by referring to Annexure-4 it is pointed out that good cause was shown which would have been rather accepted by the learned Court below. In support of his this

contention the learned Counsel for the Petitioner has relied upon a reported case 1990 (1) GLR 36 T. Chiru and Ors. v. N. Kabui and Ors. In this connection its paragraphs 15 and 16 are referred. Mr. Bhattacharyya, the learned Counsel has also referred to another reported case [Billa Jagan Mohan Reddy and Another Vs. Billa Sanjeeva Reddy and Others](#), and has submitted that delay in producing the documentary evidence before the settlement of issues be not taken the Courts in a rigorous way as required u/s 5 of the Limitation Act. In the case referred it is submitted that production of document was so prayed by the party at the hearing stage and that too was allowed. Since in the instant case as submitted the document was not in possession of the Petitioner, the prayer so made vide Annexure-4 as to condone the delay and the explanation for delay would not have been taken rigorously. While deciding such issues, true it is that it is incumbent on the part of the Court as to examine whether such document was relevant to decide the real issue in controversy and when the Court felt that interest of justice requires that the document may be received, such prayer can well be allowed. In the instant case, as submitted, the opinion of the handwriting expert has already been proved but unless the reasoning so given die handwriting expert is not proved, the opinion part in itself cannot be said to be of any use and hence the necessity arose for making such prayer which was arbitrarily rejected. On the same point, Mr. Bhattacharyya has referred to [Madan Gopal Kanodia Vs. Mamraj Maniram and Others](#), and has particularly referred to its head note "C" paragraph 27. In the background of this reported case it is further argued that the provisions of Order 13, Rules 1 and 2 only prevent belated production document but the provisions also cloth the Court with discretion to allow production of document if the Court is satisfied that good cause is shown to the Court's satisfaction and that perusal of such document as to meet the ends of justice in the particular case was necessary. It is also at this stage submitted that after the production of such document when Mr. Bhatnagar will be re-examining the other side in the present case will be getting ample opportunity to rebut the same and it has wrongly been held by the learned Court below that allowing such petition of the Petitioner would cause great prejudice to some of the Defendants. On the same point another reported case is referred 1988 (1) GLR 44 Harold D. Santos v. Biswanath Goenka and Ors.

4. Over and above some of the reported cases cited on the point that such petition so filed for accepting the document though at belated stage as settling the issues would have been accepted by the learned Court below which got rejected on flimsy grounds, the learned Counsel for die Petitioner has banked much upon another reported case 1987 (1) GLR 372 Jay Prakash Singh v. Ram Narayan Singh which deals with the powers of the Court in case the documents are produced at belated stage and also in that context the provisions of Section 115 CPC relating to the scope of this Court as to interfere with such order passed by the learned Court below in an arbitrary manner and paragraphs 6 and 9 of this reported cases are relied upon. Mr. Bhattacharyya, die learned Counsel in is background of the reported case has once

again averred that while disposing of the present Petitioner's prayer, the learned Court below had only to be satisfied to die existence of good and sufficient grounds for not filing the document at or before the settlement of issues and since the reasons so shown by the Petitioner were not malafide or for vexatitious reasons, the same would have been accepted because the said document being vital would assist the Court in coming to a correct decision and there was no oblique motive for not filing the document earlier which in the instant case was also not in the possession of the Petitioner. It is also emphatically argued that the refusal to receive the said document is such that it would result in miscarriage of justice and therefore the High Court can very well interfere with the impugned order u/s 115 Code of Civil Procedure. Another reported case 1996 (2) GLT 87 Asrab Ali v. The heirs of Late Ishab Ali and Ors. is also cited and in die background of this reported case, it is submitted that if any of the document is received by the Court at a later stage, the reasons are to be recorded and the Court is to decide the matter relating to acceptance of such document in the summary manner also dealing as to whether the said document was relevant or not and that the Court should take liberal view in order to decide such matter. The object of Order 13, Rule 2 Code of Civil Procedure, it is pointed out, protects filing of documents at a belated stage before the Court so that it can do justice to the parties.

5. On the point as to what extent the said document (the reasoning part of the opinion of the handwriting expert) is relevant as to decide the issues, the learned Counsel Mr. Bhattacharyya representing the Petitioner has submitted that any opinion of the handwriting expert is based upon the reasoning so given by the handwriting expert and the opinion part in itself has got no value unless the reasoning so assigned as to arrive at such opinion are also looked into and" in this connection a reference is also made to the provisions of Section 45 of the Evidence Act. In the instant case it is submitted that the handwriting expert has already been examined, his opinion part is proved but the present Petitioner Defendant No. 5 has raised an issue to be decided in his favour by filing a petition (Annexure-4) for accepting the document relating to the reasoning so assigned by Mr. Bhatnagar which was so relevant to be accepted as to meet the ends of justice. To what extent the reasoning for arriving at a decision giving opinion is the part and parcel of the opinion of the handwriting expert. Mr. Bhattacharyya, the learned Counsel for the Petitioner has referred to some of the reported cases detailed below as to impress upon that such document (reasoning part of the opinion) was the relevant piece of document which in the instant case though filed at belated stage would have been accepted also for the reason that the said document was not in possession of the present Petitioner and secondly because of the opinion part already been proved: [Haji Mohammad Ekramul Haq Vs. The State of West Bengal](#), particularly paragraph 4 of this judgment is read and point out that merely opinion supported by any reasons of the expert cannot be relied upon and hence there was necessity, as submitted by Mr. Bhattacharyya, the learned Counsel for the Petitioner as to prove

the reasoning part of the opinion. He also claims himself to be fortified by a reported case AIR 1980 SC 531 *Murarilal v. State of M.P.* Paragraph 11 of this reported case is particularly referred and has submitted that the expert's opinion must be substantially corroborated and the reasons must be carefully proved and examined. By looking into para 30 of the reported case [State of Maharashtra Vs. Sukhdeo Singh and another Vs. State of Maharashtra Through C.B.I. Vs. Sukhdev Singh alias Sukha and others](#), which is also cited, it transpires that the Apex Court has held that in case of the evidence of the specially skilled person like handwriting expert the corroboration is necessary and the approach of the Court while dealing with the opinion of the handwriting expert should be to proceed cautiously, prove the reasons for the opinion considering all other relevant evidence and decide finally to accept or reject. The quality of the opinion of the handwriting expert is held by the Apex Court as submitted to depend on the soundness of the reason on which the opinion is founded and thus in that circumstance the said document so produced at belated stage for proof was undoubtedly a relevant document and as to meet the ends of justice the prayer for proving the document would have thus been allowed. Another reported case AIR 1977 SC 268 *Suryya Kanta Sarkar v. The State of Assam* is also referred and it is submitted that when an expert is to depose on a particular point it is the duty of the expert to state in clear terms the basis or foundation or the date on which he concludes his finding and the Court is competent to consider his opinion along with the date and has definitely jurisdiction to consider as to whether the conclusion or the opinion should be accepted or not. In this background too, the impugned order under challenge thus requires interference.

6. Summing up, Mr. Bhattacharyya, the learned Counsel for the Petitioner has thus submitted that the opinion of the handwriting expert has to be looked into with the reasoning so assigned for arriving at such opinion and that way in the instant case the said document relating to the reasoning is vital to be proved and looked into as to arrive at right conclusion and furthermore Under Order 13, Rules 1 and 2 CPC there is no hard and fast rule as not to accept any document that too a document to in possession or domain of the party producing the same at a belated stage and the only requirement so as to see the reasoning that too liberally for not producing those documents earlier and also to see as to whether such document is required or not. By looking all these, in the instant case, it is thus submitted that the learned Court below has erred in rejecting the petition so filed by Defendant No. 5 figuring here as Petitioner and thus the powers u/s 115 CPC may be invoked interfering with the order under challenge.

7. Mr. S.S. Sharma, the learned Counsel assisted by Mr. D.K. Bhatra, the learned Counsel represents apposite party No. I whereas Mr. A.R. Banerjee, the learned Counsel assisted by Mrs. B. Chaudhury, the learned Counsel appears for opposite party No. 8 and O.P. No. 6 is represented by Shri P.C. Deka, the learned Counsel assisted by Mr. N. Goswami, the learned Counsel. All these lawyers are also heard.

8. The only point so raised by Mr. S.S. Sharma, the learned Counsel for O.P. No. 1 is that in the instant case the powers so given to this Court u/s 115 CPC cannot be invoked because on no account it can be said that the learned Court below while passing the impugned order has not exercised the jurisdiction vested to him. It was within the competence of the learned Court below as to dispose of such petition (Annexure-4) hearing the parties which has been done particularly not condoning the delay relating to the document filed to be proved at belated stage and also holding that acceptance of such documents would cause prejudice to some of the Defendants. In support of his this contention he has banked upon reported case [Brij Gopal Mathur and Another Vs. Kishan Gopal Mathur and Others,](#)

9. The other lawyers representing O.P. Nos. 6 and 8 have simply submitted that acceptance of such document could not give opportunity to the Defendants for rebuttal which would cause great prejudice and in that light the petition at Annexure-4 deserves-non-acceptance.

10. After hearing the learned Counsel for the Petitioner Mr. A.K. Bhattacharyya also the learned Counsel Mr. P.C. Deka, for O.P. No. 6 with that of the learned Counsel Mr. S.S. Sharma for O.P. No. 1 and the learned Counsel Mr. A.R. Banerjee, for O.P. No. 8,1 find that there is much of substance in the argument so advanced by the learned Counsel Mr. A.K. Bhattacharyya for the Petitioner filing this petition with a prayer for interferring with the impugned order dated 10.8.94 passed in M.S. (R) 3/87. In my considered opinion, the cause so shown in the petition (Annexure-4) was sufficient and the document (the reasoning part of the opinion of the handwriting expert) was a relevant document and in that light by taking a lenient view, the learned Court below would have allowed the petition (Annexure-4) directing the document to be proved. It also comes in light by going through the reported cases on behalf of the Petitioner that the said document was vital which is the reasoning part of the opinion of the handwriting expert and has also held in the reported cases so cited that while disposing of the petition relating to acceptance of document though filed at a belated stage it was expected of the Court as to see whether the non-acceptance of the same would cause injustice to the parties when such document was relevant as to arrive at a decision in course of adjudication of the issue. In my considered opinion, therefore, the impugned order thus warrants interference. Taking that view, the impugned order under challenge is thus set aside with a direction to the learned Court below as to give opportunity for adducing evidence in connection with the document (reasoning part of the opinion) desired to be proved. However, by way of precaution so that prejudice may not be caused to the other side while examining Mr. Bhatnagar or in any way in course of getting the said document proved by other means, opportunity be given to the other side to rebut such evidence fixing next date so that the other side may have time and opportunity to rebut the same if they so desire.

11. This Civil Revision Petition is accordingly disposed of L.C.Rs. be sent back to the concerned Court accordingly. No separate order as to costs.