

Form No: HCJD/C-121

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 2229 of 2021

Bashir Ahmed

Versus

Syed Anees Ahmed and others.

Petitioner by:	Syed Javed Akbar, Advocate.
Respondents by:	Ms. Nosheen Ubaid and Mr. Naeem Yar Gondal, Advocates for the respondent No. 1. Barrister Yasir Ahmed Rathore, Advocate for the respondent No. 2 / F.G.E.H.A.
Dates of hearing:	24.06.2021, 13.07.2021 and 28.07.2021.

TARIQ MEHMOOD JAHANGIRI, J:

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 25.05.2021 passed by learned Civil Judge, West-Islamabad, whereby the application filed by the petitioner under Article 84 of the Qanun-e-Shahadat Order, 1984 for comparison the signatures of respondent No. 1 / Syed Anees Ahmed was dismissed.

02. Brief facts of the case are that petitioner / plaintiff filed a suit titled as "*Bashir Ahmed Vs. Syed Anees Ahmed and another*" for specific performance of contract against the respondents, whereby respondent No. 1, the owner of plot No. 14, Street No. 6, Sector G-14/1, Islamabad, sold out the plot to the petitioner for a consideration of Rs. 26,56,000/-, out of which the petitioner has paid a sum of Rs. 18,00,000/- and contract between the petitioner and respondent No. 1 is based on two agreements to sell dated 19.03.2004 and 21.10.2006. In the written statement respondent No. 1 has categorically denied the execution of agreements between the parties and stated that he has not affixed any signatures on the agreements and both the agreements were fake. Issues were framed, evidence of the parties recorded and the agreement dated 19.03.2004 was exhibited as P-2 and agreement dated 21.10.2006 was exhibited as P-6. During cross examination, respondent No. 1 has admitted that he has no objection if signatures on the agreements are compared with his admitted handwriting through Handwriting Expert. The petitioner in this regard filed an application under Article 84 of Qanun-e-Shahadat Order, 1984 for

comparison of signatures, which was dismissed vide impugned order dated 25.05.2021.

03. Learned counsel for the petitioner *inter alia* contends that it is just and proper if the signatures of the respondent No. 1 be compared with his admitted hand writing through Handwriting Expert, in order to resolve the actual controversy between the parties; the impugned order is against the facts brought on record and the law applicable on the subject; the controversy between the parties would be justly and properly resolved by referring the disputed signatures of respondent No. 1 to a Handwriting Expert; comparison of the signatures of respondent No. 1 would prejudice nobody's case, it would rather help the learned trial Court to resolve the controversy involved in the case in a just manner; the impugned order has been passed in a slipshod manner and is based on surmises and conjectures and has prayed for setting aside of the impugned order dated 25.05.2021.

04. On the other hand, learned counsel for respondent No. 1 controverted the arguments advanced by learned counsel for the petitioner and stated that impugned order has rightly been passed under Article 84 of the Qanun-e-Shahadat Order,

1984 and Court may itself make a comparison of the alleged signatures; the case is lingering on since last 13/14 years and the petitioner has deliberately tried to delay the proceedings; the agreements Ex-P-2 and P-6 are fake and forged, even prepared by the plaintiff and the respondent No. 1 has got no concern whatsoever with the said agreements; there is no illegality in the impugned order and has prayed for dismissal of the instant writ petition.

05. Arguments advanced by learned Counsel for the parties have been heard and record has been perused with their able assistance.

06. In order to avoid any ambiguity, the evidence / statement of respondent No. 1 in cross examination is reproduced herein under;

وہ درست ہے کہ جواب دعوی پر مریے دستخط **EX.DW1/1** اور **EX.DW1/2** ہے۔ وہ درست ہے کہ دعوی اک دفعہ ڈگری ہو گئی تھا جسکی منسوخی کی درخواست **12(2)** دی تھی جس پر مریے دستخط **EX.DW1/3** موجود ہے۔ وہ درست ہے کہ **EX.DW1/4** مریے دستخط بر درخواست مناسب حکم موجود ہے۔ **EX.P/2** پر مریے دستخط موجود نہ ہے اس طرح **EX.P/6** پر بھی مریے دستخط موجود نہ ہے۔ وہ درست ہے کہ مریے دستخط **EX.DW1/1** تا **EX.DW1/4** دستخط / **EX.P/2** اور دستخط **EX.P/6** / مطابقت / مشابہت کرتے ہے۔ از خود کہا کہ **EX.P/2** اور **EX.P/6** پر مریے دستخط بنائے گئے ہے۔ اگر عدالت مریے تسلیم شدہ دستخط پر جواب دعوی اور درخواست جو **EX.DW1/1** تا **EX.DW1/4** مری نے درست تسلیم کئے ہے کا موازنہ مریے متنازعہ

دستخط EX.P/2 تا EX.P/6 سے بزرگ **Handwriting** **Expert** سے کروا لے تو مجھے کوئی اعتراض نہ ہے۔ اگر **Expert** رپورٹ دے گا ہے کہ متنازعہ دستخط اور تسلیم شدہ دستخط ایک ہی شخص کے ہیں تو میں اسے تسلیم کرونگا اور کوئی اعتراض نہ کرونگا۔

07. Respondent No. 1 has categorically admitted in his statement that he has no objection if his signatures on agreements be compared with his admitted handwriting, he has also admitted that if the expert gives his opinion that the disputed signatures are affixed by him then he will accept the same and will have no objection. He has further stated that his signatures on the Ex.P-2 and Ex.P-6 have resemblance with his admitted handwriting / signatures.

08. The sole controversy between the parties is the signatures of respondent No. 1, the same will be resolved by sending the same to the Handwriting Expert and will be helpful for the just and proper decision of the case. Even the learned Trial Court in impugned order has mentioned that the proving of signatures on the documents is a detrimental point in the lis in hand but the matter is so prolonging which almost took 13/14 years and dismissed the application on the ground that the petition has been filed at belated stage.

09. It is also admitted that after decision of the case the aggrieved party will file an appeal in this Court and again the concerned aggrieved party will approach the Hon'ble Supreme Court of Pakistan for redressal of his grievance. At this stage, if the main controversy is resolved by comparing the signatures of respondent No. 1 with admitted / authentic signatures through the Handwriting Expert, it will be very beneficial / helpful for Trial Court for deciding the matter in a just and proper manner.

10. It is imperative to reproduce Article 84 of the Qanun-e-Shahadat, 1984 for ready reference;

"84. Comparison of signature, writing or seal with others admitted or proved.---(1) In order to ascertain whether a signatures, writing or seal is that of the person by whom it purports to have been written or made any signatures, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose".

11. In this regard, this Court is fortified with a view of the August Supreme Court of Pakistan in a case titled as **"Rehmat Ali Ismailia Vs. Khalid Mehmood" (2004 SCMR 361)**, wherein, at page 366 of the judgment, it was observed as under:--

"The above provision do empower the Courts to make the comparison of the words or figures so written over a disputed document to that of admitted writing/signature and the Court could exercise its judgments on resemblance of admitted writing on record. It is true that it is undesirable that Presiding Officer of the Court should take upon himself the task of comparing signature in order to find out whether the signature/writing resembled to the disputed document with that of admitted signature/writing but the said provision do empower the Court to compare the disputed signature / writing with the admitted or proved writing. Reference may be made to Ghulam Rasool and others v. Sardarul Hassan and another (1997 SCMR 976), Mst. Umatul Waheed and others v. Mst. Nasira Kausar and others (1985 SCMR 214) and Messrs Waqas Enterprises and others v. Allied Bank of Pakistan and others (1999 SCMR 85)".

12. In cases titled as **"Zar Wali Shah Vs. Yousaf Ali Shah and 9 others"** (1992 SCMR 1778) as well as **"Abdul Ghaffar Vs. Muhammad Sharif"** (1993 CLC 1779), the cases were remanded to the learned Trial Courts for deciding afresh by getting the expert opinion of Handwriting Expert.

13. In the present case the report of Handwriting Expert, subject to the objections, if any, would have

facilitated the Court to formulate its opinion on the question and as such it would have been a judicious exercise of discretion if the application was allowed. The delay was, therefore, not a factor which could have come in the way of the exercise of discretion for such a course would have advanced the cause of justice.

14. In the light of above discussion, instant writ petition is **allowed**, the impugned order dated 25.05.2021 passed by learned Civil Judge 1st Class, West-Islamabad is set aside. Resultantly application filed by the petitioner under Article 84 of Qanun-e-Shahadat Order, 1984 for comparison of signatures of respondent No. 1 / Syed Anis Ahmed stands allowed.

15. Learned Trial Court is directed to complete the said exercise within a period of 30 days, positively. No order as to cost.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in open Court on this ____ day of August, 2021.

JUDGE

Approved for reporting.