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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 03.12.2025*

\+ **CM(M) 2342/2025, CM APPL. 75904/2025 & CM APPL. 75903/2025**

VIJAY KUMAR .....Petitioner

Through: Mr. Mohit Kumar, Advocate.

versus

MAMTA GARG .....Respondent

Through: None.

CORAM: JUSTICE GIRISH KATHPALIA

O R D E R (ORAL)

1. Petitioner/defendant has assailed order dated 11.09.2025 of the learned trial court, whereby application under Section 45 read with Section 73 of the Evidence Act, as filed by the respondent/plaintiff was allowed and the document Ex.PW1/1 was permitted to be got forensically examined by a private expert to be engaged by the respondent/plaintiff. Having heard learned counsel for petitioner/defendant, I do not find it a fit case to even issue notice.

2. Broadly speaking, the present respondent filed a suit against the present petitioner for recovery of Rs. 15,50,000/- with *pendente lite* and

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future interest, alleging that the parties had friendly relations and by misusing their friendship, the present petitioner borrowed Rs. 11,50,000/- from the present respondent at various stages, but refused to return the same. In the course of trial, the present respondent tendered in evidence an affidavit as Ex.PW1/1 purportedly executed by the present petitioner admitting that he had taken a loan of Rs. 8,00,000/- for a period of six months at the interest of 2.5% per month. Since stand taken by the present petitioner was that the said document Ex.PW1/1 is a forged and fabricated document, the present respondent moved an application for forensic analysis of the said document from CFSL. After hearing both sides, learned trial court disposed of the said application by permitting the present respondent to get Ex.PW1/1 forensically examined through her privately engaged handwriting expert.

3. Learned counsel for petitioner strongly contends that the impugned order is not sustainable in the eyes of law because Ex.PW1/1 is a "*foreign document*". It is contended by learned counsel that since the plaint does not specifically mention the said document, the document is a foreign document and cannot be deemed to have been proved. Learned counsel for petitioner also contends that merely because a document has been assigned exhibit number, it does not mean that the document stands proved.

4. I am in agreement with the learned counsel for petitioner that merely because a document has been assigned exhibit number, it does not mean that the document stands proved in accordance with law. But this legal position

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is not relevant for present purposes.

5. The contention of learned counsel for petitioner that the document Ex.PW1/1 cannot be taken on record because the same has not been described in the plaint fails to convince. For, as clearly stipulated in Order VI Rule 2 of the Code of Civil Procedure, the pleadings are required to contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. In the present case, perusal of plaint (*Annexure B*) would show that the entire claim of the present respondent was pleaded concisely. Not just this, paragraph 15 of the plaint specifically pleaded that "*there are several evidences & admissions of the defendant regarding the money in SMS, Whatsapp messages, Call Recordings etc. which shall be furnished by the plaintiff*" before the trial court at relevant stage. Admittedly, the document Ex.PW1/1 is one such document covered by paragraph 15 of the plaint and the same was filed along with the remaining documents at appropriate stage of the proceedings.

6. Further, in the course of chief examination of the present respondent as PW1, an objection was raised on behalf of the present petitioner on the same grounds as now raised and that objection was rejected on 16.01.2019, but that order remains not challenged till date.

7. It would also be significant to note that according to the impugned order, the present petitioner himself admitted in his reply Ex.PW1/4 that the

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present respondent had made him execute an affidavit, which affidavit is the document Ex.PW1/1.

8. I find no infirmity, much less perversity in the impugned order that would call for interference under Article 227 of the Constitution of India. Therefore, the impugned order is upheld.

9. The petition is totally devoid of merits and is frivolous, so dismissed with cost of Rs. 10,000/- to be deposited by petitioner with DHCLSC within one week. Pending applications also stand disposed of.

10. Copy of this order be sent to the learned trial court for information.

GIRISH KATHPALIA

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(JUDGE)

DECEMBER 03, 2025/*dr*

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