



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 185 of 2026

Mr. Vincent Phliip D'Costa, Major
Household R/O Auchit Waddo
House. No. 117, Tivim, Bardez Goa.

.... Petitioner.

Versus

Mrs. Stella Lawrence Freitas
[Deceased] Major Household R/o
2007, St. Vincent Street Pune 411001
- Maharashtra
Since deceased represented through
following legal heirs,

a) Ms. Maria Khotari, major,
housewife

b) Mr. Hasmukh Vijaylal Khotari,
major, businessman, both
resident of Plot No. 21, Survey
No. 255, Aundh-Pune, 411007

c) Mrs. Fleur Philomena Butler,
major, housewife, d) Mr. James
Anthony Butler, major,
professional, both residents of
410, main street, Nagalli hill
colony, Dona Paula, Panaji Goa.

...Respondents.

Ms. Ashwini Agni, Advocate with Ms. Rajlaxmi Bhatkar, Ms. Afrin
Harihar Khanm and Mr. Junaid Shaikh, Advocate for the Petitioner. Mr.

Jatin Ramaiya, Advocate with Mr. Pradeep Kashyap, Mr. Omkar Parab, Advocates for Respondents No.1(a) and 1(b).

Mrs. Fleur Butler, Respondent No.1(c) present.

Mr. James Butler, Respondent No.1(d) present.

CORAM: VALMIKI MENEZES, J.

RESERVED ON: 17th JULY 2025

PRONOUNCED ON: 13th MARCH 2026.

JUDGMENT:

1. Registry to waive office objections and register the matter.
2. Heard learned Counsel for the parties.
3. Rule. Rule is made returnable forthwith with the consent of the learned Counsel for the parties.
4. This Petition is filed invoking powers under Article 227 of the Constitution of India challenging Order dated 17.02.2024, passed by the Civil Judge Junior Division, B Court, Bicholim, Goa in Regular Civil Suit No.15/2009/B, allowing the Plaintiffs Application for production of additional documents (Exhibit-94) at the stage of final arguments.

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FACTS:

5. The Respondents/Original Plaintiffs filed Regular Civil Suit No.15/2009/B against the Petitioner/Original Defendant on 09.03.2009 for a judgement declaring that the Will dated 27.02.2008 executed by late Mrs. Ruby Patrick Almeida in favour of the original Defendant/Petitioner herein, to be null and void and for permanent injunction to restrain the Defendant from using the said Will to claim any of the assets of late Ruby.

6. Olive, Stella and Ruby were sisters. The Respondents/original Plaintiffs claimed to be children of Stella, late sister of Ruby. Essentially, it is the case of the Plaintiffs that the Defendant was a caretaker of the house where Ruby used to reside at Pune, when she passed away. According to the Plaintiffs, the Defendant did not allow them to meet Ruby when she was hospitalised in Dr. Dhumaskar's clinic, nor did he allow them to meet her or talk to her at the relevant time. The Plaintiffs' case is that Ruby was suffering from Diabetes and was not in a mental state to take decisions. After she was discharged from the hospital and on 27.02.2008, a Will was registered by her in favour of the Defendant, and on the death of

Ruby on 01.04.2008, the present Suit was filed on 09.03.2009 to challenge the execution of the Will mainly on the ground that the same was obtained by coercion and in the circumstances that Ruby was not in a frame of mind to understand the document which she was executing.

7. The Defendant filed his Written Statement on 20.06.2009, contending that the Plaintiffs had strained relations with Ruby and Olive for which they had filed complaints to various authorities during their lifetime and further contended that Ruby herself, out of love and affection executed a Will in his favour, bequeathing her entire estate to him and that Ruby was in a fit state of mind at the time of its execution; the Defendant claimed the Will to be genuine and valid.
8. The Civil Court rejected the temporary injunction application filed by the Plaintiffs which was assailed in Appeal and dismissed. On 31.07.2009, production and inspection of documents was completed and thereafter issues were framed on 11.08.2009 and

matter was fixed for Plaintiffs' evidence. The Plaintiffs evidence commenced on 06.03.2010 which continued throughout 2010 and was completed in the same year; the defence evidence began on 23.03.2011, during which the matter was wrongly disposed of and later revived. The deposition of DW1 was completed on 18.01.2020; evidence of DW2 commenced on 02.03.2022 and was completed on 06.07.2022; the evidence of DW3 was completed on 19.11.2022 and the evidence of DW4 was completed on 13.06.2023. The defence evidence was closed on 05.07.2023 and the matter was fixed for final arguments on 02.08.2023.

9. It is at this stage, when the Plaintiffs filed an application dated 12.06.2023 on 02.08.2023 (Exhibit-D94) for relying upon, producing and examining the opinion and report dated 07.10.2022 and Verification Report dated 16.01.2023 of a Graphologist Mr. Milind Rajore. Thereafter on 13.09.2023, an application (Exhibit-D-95) to further cross examine DW1 was filed by the Plaintiffs. The Defendant whilst opposing the Application for production of documents vide his reply dated 31.10.2023, contended that the Plaintiffs were trying to protract the matter as they were well aware

of the suit since it was filed in 2009 and issues were framed thereupon. The Civil Court, by the impugned order on 17.02.2024 allowed these additional documents to be produced and taken on record whilst imposing costs of Rs.1000/- on the Plaintiffs payable to the Defendant.

SUBMISSIONS:

10. Learned Advocate for the Petitioner, Ms. Ashwini Agni has advanced the following submissions;

A. That the impugned Order is passed contrary to the provisions of Order 13 Rule 1 CPC and has not considered the fact that the application does not cite the manner in which the Plaintiff had exercised due diligence; there was no explanation offered in the application which could constitute a ground to permitting the Plaintiff to produce the report of the Graphologist and to justify allowing the application at the stage of final arguments.

B. It was further contended that even under the provisions of Order 7 Rule 14, no document, even if it came to be in existence at a later stage, could be allowed to be produced or entered in evidence, without there being a proper justification for the same

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not being produced at the stage of the Plaintiffs' evidence. It was argued that the Plaintiffs completed their evidence in the year 2010 after which the defence evidence was completed on 13.06.2023. The Graphologist's first report was dated 07.10.2022 but the application came to be filed only on 02.08.2023, without any justification for the ten months of delay in filing the application.

C. Placed reliance on the following Judgements:

a. ***Chitrakala Fal Dessai v/s Balu Maratha @Mane***¹;

b. ***M/s Bagai Construction Tr.Prop V/s M/S Gupta Building Material Store***².

11. Learned Advocate for the Respondents, Mr. Jatin Ramaiya, has advanced the following submissions

A. Whilst supporting the impugned Order, the Learned Counsel for the Respondents submitted that the Defendants were precluded from filing the present Petition to challenge the impugned Order, since they had accepted the Order by receiving the costs of

¹ 2006 SCC Online Bom 646

² 2013 (14) SCC 1

Rs.1000/- imposed on the Plaintiff whilst passing the impugned Order; he argues that receipt of the costs were endorsed on the Roznama dated 17.02.2024, of the trial Court when the Advocate for the Defendant received the amount of costs from the Plaintiffs on the very day the Order was passed. Reliance was placed on the following judgments to buttress this submission

- a. ***NajunDA Setty @N.S Xallam and Others v/s Tallam Subbaraya Setty & Sons and Others***³;
- b. ***Bhagwant Singh Decd Thr Lrs v/s Gurucharan Kaur and Anr***⁴;
- c. ***Nurullah Kamruddin Veljee v/s Vishwambhar Kashinath Palekar***⁵
- d. ***Union Of India V/s M/S Indusland Bank Ltd and Ors***⁶,

³ ILR 2004 Kar 924

⁴ 2014 SCC OnLine 4200

⁵ 2016 SCC OnLine Bom 149

⁶ 2015 SCC OnLine Bom 4091

- e. ***Shalini Shyam Shetty and Another v/s Rajendra Shankar Patil***⁷,
- f. ***State of Punjab and Others v/s Dhanjit Singh Sandu***⁸,
- g. ***Bijendra Nath Srivastava V/s Mayank Srivastava***,⁹
- h. ***Mumtaz Yarud Dowla Wakf v/s M/S Badam Balkrishna Hotel Pvt Ltd. and Ors***¹⁰

B. It was submitted that the impugned Order has been correctly passed, since the report of the Graphologist, who is an Expert would be relevant and assist the Court in deciding the frame of mind of Ruby, the Executor of the Will in favour of the Defendant at the time the same was executed. He submits that the report clearly opines that the Executor was not in a proper frame of mind when the Will was executed. He further submits that the

⁷ 2010 (8) SCC 329

⁸ (2014) 15 SCC 144

⁹ (1994) 6 SCC 117

¹⁰ 2023 SCC Online SC 1378

application to produce the reports sufficiently justify the delay in producing the same at the stage of final arguments.

12. I will first deal with the Respondent's objection that the Petitioner has received costs awarded under the impugned Order and is therefore precluded from challenging the impugned Order. When this objection was raised, the same was substantiated by the production of the Roznamas of the proceedings for 17.02.2024 and 20.03.2024, wherein the Advocate for the Petitioner is purported to have received costs of Rs.1000/-. Perusal of the Roznama of 17.02.2024 the date on which the impugned Order was passed which show an endorsement which states "Received Rs.1000/-" and a signature of Advocate A. Kalangutkar, holding for Advocate P. Malik is endorsed below this receipt.

13. During the hearing of the matter, the Petitioner has filed an Affidavit on 22.07.2025, which is executed in Pune on 19.07.2025, stating that he has not received costs awarded by the Civil Court, nor has he instructed his Advocate before the trial Court to receive such costs. The Affiant further states that his trial Court lawyer had not

informed him that costs were received nor have such costs been handed over to him. He further avers that he is ready and willing to refund costs which may have been unauthorisedly received from the Plaintiff.

On considering the endorsement made by one Advocate Kalangutkar in the Roznama of receipt of such costs on behalf of the Advocate for the Defendant, Shri P. Malik, and on perusal of the averments made in the Defendant's Affidavit, it appears that the costs, if received, by the Advocate holding for the Defendant's Advocate, may not have been authorised by the Defendant. At least the Affidavit categorically avers so. If this be the situation, in my opinion, it would not come in the way of the Petitioner challenging the impugned Order.

14. The matter could also be viewed from a different angle, which would be, whether, this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, on examining the impugned Order would conclude that the same has been passed contrary to the provisions of Order 13 Rule 1 or Order 7 Rule 14 CPC.

15. The whole case set out in the application for production of the two reports drawn up by the Graphologist, is that the Graphologist has, in his analysis report, opined that from the analysis of the signatures, the Executant was mentally incapable to consciously and willingly sign the public Will. The application basically seeks to produce in evidence two reports of a Graphologist, claiming that his opinion would assist the Court in arriving at a just conclusion in its judgment. It must therefore be presumed that an application seeking to rely upon such expert evidence, much after both parties have closed their evidence and when the matter was at the stage of final arguments, must set out in detail, the expertise of the signatory of the report, and how graphology is an accepted science, that can assist the Court in its decision.
16. Further, the application would also have to explain why, despite exercising due diligence, the Applicant was precluded from having such opinion be given during the recording of evidence of the Plaintiffs and a further explanation why the Plaintiffs were precluded from seeking such opinion and presenting the Expert's report along with the Plaint. In other words, the application must show

compliance with the provision of Order 13, Rule 1 and Order 7 Rule 14 CPC.

17. ***In Chitrakala Fal Dessai (supra)*** the Court referred to Rule 2 of Order XIII of CPC, requiring good cause to be shown for producing additional documents, which stood deleted by the 1999 Amendment to the CPC. Nevertheless, the Court has interpreted what is “good cause” to be shown and how the Court is required to consider whether the document assists the Court in resolving the controversy in the proceedings. The following paragraph is relevant for this case:

“9. It is pertinent to note that Rule 2 of Order 13 requiring good cause to be shown has now been deleted and by amendment sub-rule (3) is added to Rule 14 which states that leave of the Court has to be obtained for production of such documents. But even accepting that while persuading the Court to grant leave, a party has to show cause why the documents could not be produced earlier, not a very strict, restricted and pedantic view can be taken of this provision. Ultimately the Court will have to ensure that all documents which assist it to resolve the controversy before it in an efficient manner are available for its perusal. Unless the Court comes to a conclusion that the facts are so gross that the only inference that can be drawn from the conduct of the party is that the documents which are sought to be produced are manufactured, the Court should not generally deny leave to produce documents because ultimately it is always open to the other side to cross-examine the party who produces the documents to establish that the said documents are not relevant or that the case based on the said documents is not true. In my opinion in this case, at this stage, it is not possible to

come to a conclusion that the documents at serial Nos. (f) and (j) are manufactured. However, that does not preclude the defendant, if he so desires, to cross-examine the plaintiff and persuade the Court to hold so. In the nature of things, no final opinion can be expressed by this Court on this aspect of the matter, at this stage.”

(Emphasis Supplied)

18. Considering that ***Chitrakal Fal Dessai*** (supra) was passed by the Court when Rule 2 was on the statute, the deletion of Rule 2 in the amendment to the CPC in the year 1998, would require Civil Courts to apply the concept of “good cause” even more strictly, since the purpose of the amendment was to cut down on the time spent in dealing with applications for production of documents, after pleadings are complete; Order 7 Rule 14 mandates the filing of all documents relied upon in the pleadings along with the Plaint, and if the same was read with the amendment brought about to Order 13, dropping the provisions of rule 2 thereof, the party seeking to produce or rely upon a document, especially at the stage of final arguments, as in the present case, would have to show good cause for such delayed production.

19. In ***M/s Bagai Construction Tr. Prop*** (*supra*), which was a judgment by the Supreme Court on the provisions of Order 7 Rule 14, prior to the amendment of the Civil Procedure Code, the Supreme Court considers the manner in which the Court has to exercise its powers under this provisions. The relevant paragraphs are quoted below:

“11) The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further

examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted.

12) After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that, it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.”

20. Perusal of the application in this case does not state any reasons or justification for such delay. The trial Court draws its jurisdiction to exercise powers under Order 13 Rule 1, read with Order 7 Rule 14

CPC to permit production of a document not relied upon in the list appended to the Plaint only if facts are pleaded in the application for production of such document at a later stage. The jurisdictional facts required to be stated in the application are of the nature, so as to justify and show good cause why the party was precluded from producing the same along with the pleadings. No such jurisdictional facts have been pleaded in the application, to enable the trial Court to proceed to grant the application. The impugned Order is therefore passed without jurisdiction.

21. There is yet another reason why the impugned Order cannot be sustained, even if the application for production of a document complied with the requirements of showing good cause for relying upon the same at a later stage of the trial. A document relied upon for evidence would have to meet with the requirements of the Evidence Act, both, in showing its relevance to the facts of the case, and proof of its contents. The documents sought to be produced are final Report dated 07.10.2022 and a Verification Report dated 16.01.2023 authored by a person who claims Graphology to be a

science, by which, on examining the handwriting of a person, one can ascertain such person's character and personality traits.

22. If the author of the Report claims that Graphology is an accepted science, and further claims he is an expert in such science, the trial Court ought to have first examined such claim, and whether any evidence led by a person making such claim, would assist the Court, by way of expert opinion, as to the state of mind of Ruby, the testatrix in the present case.

According to Black's Law Dictionary, an opinion is "an inference or conclusion drawn by a witness from facts some of which are known to him and other assumed". It is a person's belief based on a given set of facts, which, unlike facts, cannot be proved.

23. Section 39(1) of the Bharatiya Sakshya Adhiniyam, 2023 which corresponds to Section 45 of the Indian Evidence Act, 1872, regulates the manner in which opinions of experts become relevant. The provisions of Section 39(1) of BSA are quoted below:

"Section 39(1). Opinions of experts—When the Court has to form an opinion upon a point of foreign law or of science, or art, or any other field, or as to identity of

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handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.”

24. Section 39(1) of BSA and Section 45 of the Indian Evidence Act, 1872 states that when the court has to form an opinion on matters such as foreign law, science, art, handwriting, finger impressions, or any other field, the opinions of experts, persons specially skilled in these areas are considered relevant facts. For an expert’s opinion to be admissible, the matter in question must require specialized knowledge that only an expert can provide and the person giving the opinion must be proven to possess expertise in that field. However, expert testimony is only corroborative in nature. It acts as a supplement to direct or assist the court and must be evaluated along with other evidence before the court arrives at its final decision. It is not binding on the judge.

25. Section 41(1) of the BSA and Section 47 of the Evidence Act, deals with when opinions as to handwriting become relevant. The provisions of Section 41(1) of BSA are quoted below:

“Section 41(1)- Opinion as to hand-writing and signature, when relevant—When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation—A person is said to be acquainted with the hand-writing of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.”

26. The provision applies only when the Court has to form an opinion as to the person by whom documents are written or signed, and for such opinion to be formed by the Court, the opinion of persons who are acquainted with such handwriting or signature becomes a relevant fact. In the present case however, there is no dispute that the Will in question was executed by Ruby; the dispute however, raised by the Plaintiffs was that Ruby was not in a mental condition to understand the contents of the Will when she executed the same. It is this fact that requires to be proved by the Plaintiffs and expert

evidence, if any, could be led to prove the executant's mental state, at the time she executed the Will.

27. The Supreme Court in ***S.P.S Rathore V/s Central Bureau of Investigation and Anr***,¹¹ has held that expert witness as to handwriting is only opinion evidence and it can never be conclusive, it should be corroborated by clear and direct evidence as such evidence is of frail character. The relevant paragraphs are quoted below:

“47. With regard to the contention of the learned Senior Counsel for the appellant-accused that the signatures of Ms Ruchika on the memorandum were forged though she signed the same in front of Shri Anand Prakash, Shri S.C. Girhotra, Ms Aradhana and Mrs Madhu Prakash and they have admitted the same, we are of the opinion that expert evidence as to handwriting is only opinion evidence and it can never be conclusive. Acting on the evidence of any expert, it is usually to see if that evidence is corroborated either by clear, direct or circumstantial evidence. The sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. A court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a court to record a finding about a person's writing in a certain document merely on the basis of expert comparison, but a court can itself compare the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of a handwriting

¹¹ 2017 (5) SCC 817

expert is also relevant in view of Section 45 of the Evidence Act, but that too is not conclusive. It has also been held by this Court in a catena of cases that the sole evidence of a handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing. It is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear, direct evidence or by circumstantial evidence.

48. In Mobarik Ali Ahmed v. State of Bombay this Court has held as under: (AIR p. 864, para 11)

"11.... Learned counsel objected to this approach on a question of proof. We are, however, unable to see any objection. The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signatures being affixed. It may be proof of the handwriting of the contents, or of the signatures, by one of the modes provided in Sections 45 and 47 of the Evidence Act.

It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signatures of the alleged sender limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship.

In an appropriate case the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to

determine its authorship. We are unable, therefore, to say that the approach adopted by the courts below in arriving at the conclusion that the letters are genuine is open to any serious legal objection. The question, if any, can only be as to the adequacy of the material on which the conclusion as to the genuineness of the letters is arrived at. That however is a matter which we cannot permit to be canvassed before us."

49. In *Bhagwan Kaur v. Maharaj Krishan Sharma*" this Court held as under: (SCC p. 53, para 26)

*"26... It is no doubt true that the prosecution led evidence of handwriting expert to show the similarity of handwriting between (PW 1/A) and other admitted writings of the deceased, but in this respect, we are of the opinion that in view of the main essential features of the case, not much value can be attached to the expert evidence. The evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. The courts should, therefore, be wary to give too much weight to the evidence of handwriting expert. In *Kishore Chandra Singh Deo v. Babu Ganesh Prasad Bhagar*¹² this Court observed that conclusions based upon mere comparison of handwriting must at best be indecisive and yield to the positive evidence in the case."*

50. *It is thus clear that uncorroborated evidence of a handwriting expert is an extremely weak type of evidence and the same should not be relied upon either for the conviction or for acquittal. The courts, should, therefore, be wary to give too much weight to the evidence of handwriting expert. It can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear, direct evidence or by circumstantial evidence."*

28. Applying ratio of this judgement to the facts of the present case, what would be relevant for the Court to consider first, is whether

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there was clear and direct evidence available before the Court on the state of mind of the executor of the Will, to suggest that she was not in a fit state of mind to know or understand the contents of the Will.

29. The two witnesses to the execution of the Will, DW-2 Raymond and DW-3 Minguel, were examined and have been extensively cross examined. They have deposed to the state of mind of the testatrix, as on the date she executed the Will dated 27.02.2008, before the Sub-Registrar. The relevant date therefore, when the Plaintiff is required to prove that the Will was not executed of the free will of Ruby, was 27.02.2008; what is therefore relevant is, the evidence before the Court to suggest the state of mind of the executor on that date.

30. The doctor who has examined the testatrix has deposed that she was admitted in his hospital on 18.02.2008 and was discharged on 22.02.2008. He has certified that on her discharge, she exhibited that her central nervous system was not stable and she was talking irrelevant and showed sense sometimes. The deposition is restricted to the state of mind of the executant up to 22.02.2008 and not on the date of execution of the will. Since the trial court is ceased of the

matter, it would be inappropriate for this Court to assess the evidence. Suffice to state that the Application for taking on record the Graphologist report must have direct relevance to the evidence of the aforesaid three witnesses who have been already examined. One such witness was a medical expert.

31. In this scenario, the trial Court ought to have examined whether Graphology was itself a science, and whether the person who authored the report had sufficiently stated how the same was an accepted science, such that it would assist the Court, by opinion evidence under section 39(1) of the Bharatiya Sakshya Adhiniyam, 2023 which corresponds to Section 45 of the Indian Evidence Act, 1872, to arrive at a decision on the issue of soundness of mind of Ruby, as on the date of executing the Will

32. According to Collins Dictionary, Graphology is defined as the study of handwriting, especially to analyse the writer's character. Graphology is the study of handwriting to infer personality traits. Handwriting is believed to reflect an individual's subconscious patterns, capturing aspects like personality, emotional state, and

behaviour through characteristics such as slant, stroke pressure, spacing, and letter formation. Its methods and conclusions are not supported by scientific evidence, and as such it is considered to be a pseudoscience. Graphologists perceive handwriting analysis as a doorway to the subconscious. Graphologist claim that not only conscious but subconsciously formed habit patterns and personality traits show up in an individual's handwriting.

33. The first report dated 07.10.2022 of Milind R. Rajore, the witness who claims to be a practicing Graphologist claims that his opinion on the state of mind of the person whose handwriting he examined would confirm that, “that person’s health seems to be extremely deteriorated”. The report further incorporated a Disclaimer, that the observations and analysis are carried on a photocopy of the document and the observations have limitations and need to be confirmed after analysis if the original document. The report also does not state how Graphology is an accepted science nor does it state the experience of the expert witness.

34. In the second report which is dated 16.01.2023, the Graphologist has stated certain qualifications that he possesses, which mainly pertain to the fact that he claims to have authored 13 books and is a recognised Government handwriting expert. Even this report contains a disclaimer similar to his earlier report. There is also no statements made in the report as to how Graphology is a science which the Court should accept to enable it to formulate an opinion as to the state of mind of the testatrix.

Thus, neither of the reports throws light on the claim that Graphology is a science nor the manner in which the opinion of the Graphologist would in any manner support the evidence of the two eye witnesses to the execution of the Will and the doctor's evidence.

35. The trial Court has not examined the relevance of the two reports in relation to section 39(1) of BSA, 2023 (45 of the Evidence Act) and has mechanically allowed the application. In the absence of concluding that the reports would be relevant to the decision of the matter or that the evidence of the Graphologist would be considered in compliance with the Section 39(1) BSA, 2023 the trial Court could not have granted the application.

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36. For all the aforementioned reasons, the Impugned order dated 17.02.2024 cannot be sustained and must be quashed and set aside. Accordingly, the Writ Petition is allowed. Rule is made absolute in terms of prayer clause 'a'. The order dated 17.02.2024, passed by the Civil Judge Junior Division, Bicholim in Regular Civil Suit No. 15/2009/B is quashed and set aside

VALMIKI MENEZES, J.