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

*Reserved on: 04.11.2026*
*Date of Decision:19.11.2026*
*Date of Uploading:19.11.2026*

\# **CNR No. DLHC010484922026**

\+ CM(M) 2236/2026 & CM APPL. 69826/2026 & CAV 483/2026 & CM APPL. 69827/2026

HARPREET SINGH & ANR. .....Petitioners

Through: Mr. Abinash K. Mishra and Mr. Gaurav Kumar Pandey, Advocates

versus

SARABJIT KAUR .....Respondent

Through: Mr. S.K. Sharma and Mr. Tejas Singh, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**J U D G M E N T**

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**1.** Through the present petition, the petitioners/defendants assail the order dated 18.09.2026, passed by the learned Civil Judge-08 (Central), Delhi[1], in CS SCJ 1585/18[2], titled *"Sarabjit Kaur v. Harpreet Singh and Anr."*.

**2.** The facts, shorn of unnecessary detail, as necessary for the disposal of the present petition, are as follows, in 2018, the respondent/plaintiff instituted the underlying suit seeking, *inter alia* declaration, mandatory and permanent injunction.

**3.** The controversy is essentially a family dispute *qua* property

[1] Hereinafter "Trial Court"
[2] Hereinafter "underlying suit"

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bearing no. *10980, East Park Road, Doriwalan, Karol Bagh, New Delhi, 110005*[3], which was was originally owned by Late Mr. Sujan Singh, who was married to Late Mrs. Prakash Kaur. The couple had 4 children namely, Mr. Rajinder Singh, Late Mrs. Devender Kaur, Late Mr. Kuldip Singh and Mr. Gurmit Singh. The petitioners are the sons/only legal heirs of Late Mr. Kuldip Singh and the respondent is the wife of Mr. Gurmit Singh.

**4.** The respondent contended therein that Late Mr. Sujan Singh executed a will dated 08.01.1994 in favour of his wife i.e., Late Mrs. Prakash Kaur, in whose name the property came to be mutated in the DDA records on 01.08.1994. It was further contended that Late Mrs. Prakash Kaur subsequently executed a will dated 31.05.2002 and a registered sale deed dated 21.06.2007 in favor of the respondent *qua* portions of the suit property which form the subject matter of the underlying suit. Contrarily, the petitioners contended that Late Mr. Sujan Singh executed a will dated 09.04.1994, whereby he bequeathed specified portions of the suit property in favour of his sons i.e., Late Mr. Kuldip Singh and Mr. Gurmit Singh. In a nutshell, the underlying suit involves *inter alia*, examination of the rival wills dated 08.01.1994 and 09.04.1994.

**5.** Pursuant to the institution of the underlying suit, summons got served on 30.07.2018 and the petitioners moved the written statement dated 04.08.2018 thereto, along with a counter claim. Sequel thereto, the respondent preferred the replication to the written statement and the written statement to the counter claim. Further, evidence was directed to be led in common for the underlying suit and the counter claim.

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[3] Hereinafter "suit property"

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**6.** The learned Trial Court *vide* order 01.10.2019, framed issues and directed the parties to file their respective list of witnesses within 15 days, whereupon, the petitioners and the respondent filed their list of witnesses on 09.10.2019 and 21.10.2019, respectively. On the same date i.e., 01.10.2019, issues were framed in the counter claim as well. Subsequently, plaintiff's evidence got concluded on 24.10.2024.

**7.** While the suit stood at the stage of defendant's evidence, on 16.04.2025, the petitioners moved an application under Order XVI read with Section 151 of the Code of Civil Procedure, 1908[4], seeking to, (i) summon the driving license and passport of Late Mr. Kuldip Singh and thereafter send these, along with the rival wills dated 08.01.1994 and 09.04.1994 (both purportedly executed by Late Mr. Sujan Singh), DDA records and certain rent deeds, to the FSL/handwriting expert for comparison of signatures, (ii) summon certain records from SBI, Karol Bagh and (iii) summon the records/register of an oath commissioner from the Tis Hazari Courts. Thereafter, the learned Trial Court *vide* the impugned order dated 18.09.2026, dismissed prayer (i) sought by the petitioners through the aforesaid application. Prayers (ii) and (iii) remained unopposed by the respondent.

**8.** Aggrieved by the impugned order to the extent that it declined their reliefs sought, the petitioners have preferred the present petition.

**9.** Mr. Abinash K. Mishra, the learned counsel for the petitioners, submits that the impugned order proceeds on the erroneous presumption that the subject application was filed belatedly, whereas that is not the case, as it was preferred on 16.04.2025, within almost

[4] Hereinafter "CPC"

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2.5 months after the commencement of defendant's evidence on 31.01.2025. Attention is drawn to the fact that plaintiff's evidence itself concluded on 24.10.2024, after nearly 5 years.

**10.** Mr. Mishra points out that the petitioners' list of witnesses dated 09.10.2019, clearly states at serial nos. 5-13, that the petitioners shall summon the DDA record and the records bearing the admitted signatures of Late Mr. Kuldip Singh and Late Mr. Sujan Singh, to thereafter have the concerned signatures examined by the FSL/ handwriting expert. In respect of this, it is stated that the impugned order is perverse and liable to set aside as it failed to consider the list of witnesses, which is a material document.

**11.** It is asserted that the fact that the petitioners sought scientific examination of the records, was within the respondent's knowledge since 2018 itself, as the same was stated in paragraph 3(xiv) of the written statement as well as in the corresponding paragraph of the counter claim.

**12.** Mr. Mishra states that since the respondent pleads that Late Mr. Sujan Singh's signatures on the will dated 09.04.1994 are forged and the petitioners plead that Late Mr. Sujan Singh's signatures on the will dated 08.01.1994 as well as the signatures attributed to Late Mr. Kuldip Singh on the DDA records are forged, it is of utmost importance to undertake scientific examination of the aforementioned records, to effectively adjudicate the controversy. Attention is drawn to the issues framed in the underlying suit as well as in the counter claim, to contend that scientific examination is also necessitated in view of the issues pertaining to declaratory relief *qua* the wills.

**13.** It is urged that the impugned order suffers from a patent error of law apparent on the face of the record, as paragraph 31 of the

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impugned order records that the opinion of an expert, as to the identity of the signature of the testator of a will is not a "relevant fact". It is submitted that the said observation is contrary to Section 39 of the Bharatiya Sakshya Adhiniyam, 2023[5] (corresponding to Section 45 of the Indian Evidence Act, 1872[6]), as the said provision makes it clear that when the Court has to form an opinion *qua* the identity of any handwriting, the opinions of experts are "relevant facts".

**14.** Lastly, reliance is placed on ***Ajay Kumar Parmar v. State of Rajasthan***[7] to contend that the Court ought not to undertake comparison of the disputed signatures itself, without the aid of an expert.

**15.** *Per Contra*, Mr. S.K. Sharma, the learned counsel for the respondent submits that the subject application was rightly rejected as the same was pre-mature. In respect of this, it is stated that the attesting witnesses to the purported will dated 09.04.1994, have not yet been examined and without their examination, the petitioners cannot seek the appointment of a handwriting expert.

**16.** Mr. Sharma further submits that expert opinion is secondary and corroborative in nature and that even if the handwriting expert were to give an opinion, it would be meaningless before the examination of the attesting witnesses. Reliance is placed on ***Rohit Manchanda and Another v. Mohit Manchanda***[8], to contend that records/documents cannot be sent to the CFSL for procuring expert opinion on the mere asking of a party and that wills must be proven according to the stringent requirements prescribed in the BSA.

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[5] Hereinafter "BSA"
[6] Hereinafter "IEA"
[7] **(2012) 12 SCC 406**
[8] **2024 SCC OnLine Del 2821**

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**17.** It is added that the petitioners were aware of the rival wills and the disputed signatures from the very inception of the proceedings and have failed to proffer any satisfactory explanation for seeking the scientific examination at such a belated stage. Reliance is placed on ***Jyoti v. Anand Kishore (Deceased) Through LRs and Another.***[9] and ***Shashi Kant Dixit v. Renuka Sharma and Anr.***[10], to contend that an application seeking examination by a handwriting expert must be moved at an appropriate stage and not after an undue delay.

**18.** It is also the respondent's case that there is a considerable time gap between the execution of the purported will dated 09.04.1994 and the rent deeds from 1973-1981, and that a person's signature varies with time and age, thus the petitioners' prayer seeking scientific examination is misplaced.

**19.** Lastly, attention is drawn to the handwriting expert report dated 02.08.2018, to contend that DW-1 has already relied upon the said report in his testimony and that the said report has dealt with the signatures appearing on the purported will dated 09.04.1994 and compared it with the signatures appearing on earlier documents. Further reliance is placed on ***Shashi Kant Dixit (supra)*** and it is submitted that, through the subject application, the petitioners herein are seeking fresh scientific examination on an issue *qua* which evidence has been obtained and relied upon.

**20.** Heard. Perused the material on record.

**21.** The principal grievance articulated by the petitioners is directed against the impugned order dated 18.09.2026, whereby their application under Order XVI read with Section 151 CPC, which, as

[9] **2026 SCC OnLine Del 1648**
[10] **2017 SCC OnLine Del 10225**

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noted in the impugned order, also attracted Order XXVI Rule 10A CPC, insofar as prayer (i) is concerned, was declined. Through the said prayer, the petitioners sought to summon the driving license and passport of Late Mr. Kuldip Singh and sought that the said documents, along with the rival wills dated 08.01.1994 and 09.04.1994 (both purportedly executed by Late Mr. Sujan Singh), DDA records and certain rent deeds spanning from 1973-1981, be sent for scientific examination. Notably, prayers (ii) and (iii) of the application, remained unopposed by the respondent.

**22.** A careful perusal of the impugned order reveals that the learned Trial Court dismissed the petitioners' application, primarily on the following grounds:

(i) the subject application dated 16.04.2025 was belatedly filed,

(ii) the opinion of a handwriting expert *qua* the signature of a testator in a will is "not a relevant fact",

(iii) previous reliance of the petitioners upon the handwriting expert report dated 02.08.2018; and

(iv) the proposed documents for comparison i.e. the rent deeds from 1973-1981, the passport and driving license were not contemporaneous and lacked foundational proof

**23.** Insofar as the first ground is concerned, this Court is of the view that the same is unsustainable. A perusal of the record reveals that defendant's evidence commenced only on 31.01.2025 and the subject application was moved on 16.04.2025, roughly 2.5 months after such commencement. Pertinently, the petitioners in paragraph 3(xiv) of the preliminary submissions in their written statement dated 04.08.2018 and paragraph 3(xiv) of their counter claim dated 04.08.2018, expressly took the plea that a scientific examination of the disputed

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signatures of Late Mr. Sujan Singh against the rent deeds is necessitated. Further perusal reveals that serial nos. 5-13 of the petitioners' list of witnesses dated 09.10.2019, cites *inter alia* record of the DDA mutation proceedings, authorized representative from the Transport Department, authorized representative from the Passport Office and even a handwriting expert/expert from the FSL, with the purpose of proving that Late Mr. Kuldip Singh's signatures on the DDA records as well as Late Mr. Sujan Singh's signatures on the purported will dated 08.01.1994, are forged.

**24.** In light of the aforesaid facts, it is emphasized that the petitioners were well within their rights to prefer an application to summon witnesses with official records and/or expert witness for scientific examination, when its own stage for leading evidence opened. The petitioners, having duly cited the handwriting expert/expert from the FSL along with the officials with relevant records, in their list of witnesses as far back as on 09.10.2019, cannot be stated to have preferred the subject application belatedly.

**25.** In this regard, the reliance placed by the respondent on ***Jyoti (supra)*** and ***Shashi Kant Dixit (supra)***, is misplaced. In the former case, defendant's evidence had been closed and reopened in indulgence, and multiple witnesses were examined whereupon an application seeking examination by a handwriting expert was moved, at the very fag-end of the trial. Similarly, in the latter case, the petitioner had sufficient notice to prefer the application seeking examination from a handwriting expert, but still failed to prefer it at an appropriate stage. Thus, it is clear that the aforesaid decisions are distinguishable on facts from the present case, as the subject application herein was moved shortly after the opening of defendant's

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evidence.

**26.** Turning to the second reasoning in the impugned order i.e., the opinion of a handwriting expert not being a "relevant" fact, this Court is of the view that the same, especially in light of Section 39 BSA (corresponding to Section 45 IEA), is not tenable. Section 39 BSA makes it clear that whenever the Court has to form an opinion on the identity of handwriting, the opinions of persons skilled in questions as to identity of handwriting, are relevant facts. In view thereof, the learned Trial Court erred by holding the same to not be a "relevant fact". For the sake of ready reference, Section 39 BSA is reproduced hereunder:

> "39. Opinions of experts. —(1) 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 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 and such persons are called experts.
>
> *Illustrations*
> (*a*) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.
> (*b*) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.
> (*c*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.
>
> (2) When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any

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> computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79-A of the Information Technology Act, 2000 (21 of 2000), is a relevant fact.
> *Explanation*.—For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert."

**27.** Furthermore, considering the core nature of the dispute and the allegations of forgery and fabrication levelled by both sides, there is no reason as to why the opinion of a handwriting expert *qua* the signatures of Late Mr. Sujan Singh appearing in the rival wills, would not be a relevant fact in the underlying suit. In this regard, it is apt to refer to ***Rama Avatar Soni v. Mahanta Laxmidhar Das and Others***[11], whereby the Hon'ble Supreme Court held as follows:

> "**7.** As pointed out earlier, the appellant has filed the suit CS No. 2/34 of 2008/2003 challenging the genuineness of alleged will executed by Natabar Das in favour of the first respondent and seeking revocation of the probate of the will. As submitted by the learned Senior Counsel appearing for the appellant, in the said suit, Issue 3 has been framed that "*has Defendant 1 by practising fraud managed to get the will probated, which was a fabricated and manufactured one?*" Hence, the genuineness of the will in question needs to be decided, that is, whether the signature in the will dated 12-3-1989 allegedly executed by Natabar Das could be ascertained only by sending the document to handwriting expert. As discussed above, earlier in WP (C) No. 14997 of 2013, while setting aside the order of the District Judge dated 18-6-2013, the High Court has observed that the application filed under Order 26 Rule 10-A CPC can be considered at a later stage of the proceedings, that is, after closure of the evidence from both sides. After their witnesses were examined, the appellant-plaintiff again reiterated the prayer for sending the will in question to handwriting expert. If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered. Having regard to the issue raised in the suit, the District Judge was right in allowing the application to send the will in question dated 12-3-1989 to the handwriting expert."

**28.** At this stage, reference may also be made to ***Pazhanathal***

[11] **(2019) 11 SCC 415**

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***(dead) Through LRs and Ors. v. Alamathal (dead) Through LRs and Ors***[12], whereby it was held that the validity of a will must be first tested at the level of its execution and attestation. However, in the said case, it was also recognized that where suspicious circumstances like, *inter alia*, signatures of testator being doubtful/unusual, surround the execution of a will, the existence of such circumstances, subject to reasonable explanation, must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will has been duly proved. Applying the same to the present case, where both parties allege the signatures of Late Mr. Sujan Singh on the rival will to be forged/fabricated, this Court is of the view that the learned Trial Court, by calling the opinion of a handwriting expert *qua* the signatures "not a relevant fact", closed the door on the very scientific examination required to assess whether the signatures are genuine.

**29.** Undoubtedly, as observed in ***Rohit Manchanda and Another (supra)***, the execution of a will must satisfy the stringent statutory requirements prescribed in the Indian Succession Act, 1925[13] and the BSA. However, it was also held in the said case itself, that apart from considering the aforesaid provisions, the Court must be satisfied that the will put forth before it, is the last will and testament of the deceased, which is the precise controversy herein, as the wills sought to be referred for scientific examination are rival wills and have not been proven yet. Also, even in ***Rohit Manchanda and Another (supra)***, the petitioners therein were afforded the liberty to take help of a handwriting expert, if needed, in accordance with law.

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[12] **2026 SCC OnLine SC 1575**

[13] Hereinafter "ISA"

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**30.** It is also crucial to point out that the subject application was not confined merely to the scientific examination of the signatures of Late Mr. Sujan Singh on the rival wills, but also sought to summon Late Mr. Kuldip Singh's documents, to establish through scientific examination, that the purported signatures of Late Mr. Kuldip Singh appearing in the DDA mutation records, were fabricated. Whether Late Mr. Kuldip Singh actually signed the DDA records and consented to the mutation in favour of Late Mrs. Prakash Kaur, is a question which requires adjudication and the opinion of a handwriting expert in this regard, is indubitably a relevant fact and determinative to the underlying proceedings.

**31.** It is trite that scientific examination ought not be directed on the mere asking of a party, however, the said principle cannot be stretched so far as to defeat the right of the petitioners herein, especially in light of the nature of the dispute. Strength is drawn from ***Sugandhi (dead) by Legal Representatives and Another v. P. Rajkumar (Represented by his Power Agent Imam Oli***[14]**,** whereby the Hon'ble Supreme Court held that Courts ought to do substantial justice, as litigation is ultimately a journey towards the truth and the Court, in every dispute, must take the necessary steps to bring out the underlying truth.

**32.** Turning to the third basis for rejection of the subject application in the impugned order, i.e., the previous reliance of the petitioners on the handwriting expert report dated 02.08.2018, this Court is of the view that the same is misplaced. Evidently, DW-1 has relied on the said report in his testimony. However, the report's author has not been examined. Moreover, as is also recorded *vide* the impugned order, the

[14] **(2020) 10 SCC 706**

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report does not deal with the purported will dated 08.01.1994 or the DDA record dated 01.08.1994. Insofar as the respondent's reliance on ***Shashi Kant Dixit (supra)*** is concerned, the prayer seeking scientific examination therein was declined as there was already a handwriting expert's report on record and the expert therein had been examined.

**33.** Insofar as the last reasoning of the learned Trial Court is concerned, this Court finds the same to be equally unsustainable. The learned Trial Court declined the petitioners' prayer on the ground that the proposed comparative records lacked foundational proof and were not contemporaneous. However, Late Mr. Kuldip Singh's passport and driving licence, which are sought to be summoned from the concerned government departments, are official records which would naturally bear his genuine signatures. Likewise, the rent deeds from 1973-1981, have already been filed by the parties and can be used as comparative standards for Late Mr. Sujan Singh's signatures. Furthermore, whether and to what extent passage of time causes natural variation in signatures, is a technical question for the handwriting expert to assess. Thus, there is no impediment in referring to these records as comparative standards for scientific examination.

**34.** It is important to mention that this Court has not expressed any opinion on the merits/validity of either of the rival wills or the DDA mutation proceedings. Moreover, the scientific examination is confined to assisting the Court in ascertaining the genuineness of Late Mr. Sujan Singh's signatures appearing on the rival wills and Late Mr. Kuldip Singh's signatures appearing on the DDA mutation records. The examination is not meant to establish due execution or attestation of the wills, or the legal validity of the DDA mutation proceedings. Notwithstanding the handwriting expert's report, the due execution,

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attestation, and legal validity of the rival wills shall still be required to be proved in accordance with Section 63 ISA read with Section 67 and Section 68 BSA (corresponding to Section 68 and 69 IEA, respectively) and the legal validity of the DDA mutation records shall still be required to be proved on the basis of the evidence led by the parties. In this regard, it is germane to mention the principles laid down in ***Ajay Kumar Parmar (supra)***, whereby the Hon'ble Supreme Court held as follows:

> **27.** In *O. Bharathan* v. *K. Sudhakaran* [(1996) 2 SCC 704 : AIR 1996 SC 1140] , this Court considered a similar issue and held that the facts of a case will be relevant to decide where the court will exercise its power for comparing the signatures and where it will refer the matter to an expert. The observations of the Court are as follows : (SCC p. 713, para 18)
> "*18.* The learned Judge in our view was not right … taking upon himself the hazardous task of adjudicating upon the genuineness and authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of. Annulling the verdict of popular will is as much a serious matter of grave concern to the society as enforcement of laws pertaining to criminal offences, if not more. Though it is the province of the expert to act as Judge or jury after a scientific comparison of the disputed signatures with admitted signatures, the caution administered by this Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to be ultimately rendered."
> (See also *Lalit Popli* v. *Canara Bank* [(2003) 3 SCC 583 : 2003 SCC (L&S) 353 : AIR 2003 SC 1795] , *Jagjit Singh* v. *State of Haryana* [(2006) 11 SCC 1] , *Thiruvengadam Pillai* v. *Navaneethammal* [(2008) 4 SCC 530 : AIR 2008 SC 1541] and *G. Someshwar Rao* v. *Samineni Nageshwar Rao* [(2009) 14 SCC 677 : (2009) 5 SCC (Civ) 475 : (2010) 2 SCC (Cri) 213] .)
>
> **28.** The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the court cannot itself become an expert in this regard and must refrain from playing

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> the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the court must keep in mind the risk involved, as the opinion formed by the court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.

**35.** In view of the foregoing discussion, this Court is of the considered view that the impugned order dated 18.09.2026 warrants the interference of this Court under Article 227 of the Constitution of India. The fourfold reasoning of the learned Trial Court is not sustainable as, first, the petitioners moved the subject application promptly upon the opening of defendant's evidence, second, the opinion of a handwriting expert is a "relevant fact" under Section 39 BSA, third, the author of the report dated 02.08.2018 has not been examined and fourth, the objection regarding lack of foundational proof is unfounded, as the subject application sought to establish such proof itself by summoning the concerned officials with official records.

**36.** In view thereof, the impugned order is set aside to the extent that the learned Trial Court rejected prayer (i) of the petitioners' application under Order XVI read with Section 151 CPC and accordingly, prayer (i) of the said application, is hereby allowed. Considering that the suit is pending since 2018, the learned Trial Court is directed to issue necessary directions to the handwriting expert/FSL - to obtain the necessary documents from the Court for the

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purpose of comparison of signatures of Late Mr. Sujan Singh and Late Mr. Kuldip Singh and to thereafter submit its report expeditiously, preferably within a period of three months. Thereafter, the learned Trial Court is directed to proceed further with the underlying suit, as expeditiously as possible, in accordance with law.

**37.** Needless to say, this Court has not touched on the merits of the underlying dispute.

**38.** Accordingly, the present petition, along with pending applications, if any, stands disposed of, in the aforesaid terms.

**39.** The judgment be uploaded on the website forthwith.

**AJAY DIGPAUL, J.**

**NOVEMBER 19, 2026/**ar/as

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