

In the High Court of Punjab and Haryana at Chandigarh

CR No. 1944 of 2015
Date of decision: 19.03.2015

Narinder Singh

.....Petitioner

Versus

Parwinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Ranjit Sharma,Advocate
for the petitioner.

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SABINA, J

Petitioner has filed this petition challenging the order dated 4.3.2015 (Annexure P3) whereby application moved by the petitioner for permission to examine handwriting expert, was dismissed.

Learned counsel for the petitioner has submitted that it was very necessary, in the interest and justice, to allow the petitioner to examine handwriting and finger print expert to prove that the respondent had received ₹2,00,000/- on 28.12.2011.

Petitioner has filed suit for specific performance of agreement to sell dated 29.11.2011. When the case was listed for rebuttal evidence of the petitioner, he moved an application under Section 45 of the Evidence Act to enable him to examine hand writing expert. Trial Court, while dismissing the application, has held as

under:-

“On the basis of pleading of the parties, issues were framed by the court on 30.5.2011 and issue no. 1 and 2 covers the main relief claimed by the plaintiff in the present suit. So, onus was on the plaintiff to prove that the defendant has received Rs. 2,00,000/- on 28.12.2011 towards the balance sale price by leading evidence in affirmative. But he has not cared to examine any handwriting and finger print expert to prove the alleged signatures and thumb impression of defendant on the endorsement regarding the alleged payment of Rs. 2,00,000/- made on the backside of agreement as the defendant has specifically denied this endorsement by challenging the same as forged and fabricated one. The plea raised by the defendant that plaintiff has not come to the court with clean hands; that he has been estopped by his own act and conduct from filing the present suit and that plaintiff has got no cause of action to file the present suit are covered by issues no. 4, 5 and 6. As per Rule 3 of Order 18 CPC, plaintiff can produce the rebuttal evidence only on those issue, onus of which was placed upon the defendant. But the evidence of handwriting and finger print expert sought to have been examined by the plaintiff under Section 45 of Indian Evidence Act by way of present application is not the rebuttal evidence to the issues, onus of which has been on the defendant. Rather, the onus was upon him to

examine him in his affirmative evidence. As such, I find no merit in the present application and same is hereby dismissed. Now to come upon 12.3.2015 for rebuttal evidence.”

The reasons given by the trial Court, while dismissing the application, are sound reasons. Petitioner was required to prove that respondent No.1 had received ₹2,00,000/- from him on 28.12.2011 while leading his evidence in the affirmative but could not lead evidence in this regard in his rebuttal evidence. No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 19,2015
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