

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.3472 of 2015

Date of Decision.20.05.2015

Sanjeev Kumar

.....Petitioner

Versus

Gurnam Singh

.....Respondent

Present: Mr. Raman Mohinder Sharma, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The revision petition is against the order disallowing the prayer of the plaintiff for permission to examine a handwriting expert. The suit is for enforcement of a promissory note that purported to contain the thumb impression of the defendant. The defendant has taken a defence that he has not executed a promissory note in favour of the plaintiff and the thumb impression is a forgery. It is also his contention that if the thumb impression were to be his, it was obtained by fraud and the recitals had been filled up. There is also a plea regarding material alteration. On the basis of such contentions raised by the defendant, it appears that the trial Court has framed several issues including issue No.7 which is to the effect whether the promissory note obtained by the plaintiff is result of fraud placing the onus of proof on defendant.

2. The counsel appearing for the plaintiff claims that he has

adduced all evidence with reference to every issue regarding the genuineness of the promissory note and the defendant in his turn has given his evidence and also examined an expert witness to show that the document contains a material alteration. This according to the plaintiff must be understood as requiring only the defendant to prove material alteration and that is why issue No.7 has been framed.

3. I find the whole argument to be built on an untenable legal premise. A material alteration vitiates the document and if there is a plea that there is a recital in the promissory note which has been materially altered, the burden is only on the plaintiff and it is never on the defendant. If the defendant has contended that the document was obtained by fraud, such contention must be understood in the whole context of the defence taken by the defendant that the thumb impression was not his and if the thumb impression were to be his, the recitals had been filled up and if that recital also contains the material alteration which has been brought about by a fraud, the burden can never shift to a defendant. The issue No.7 would not require to be answered and the trial Court is directed not to give answer on the said issue but the Court would only examine the issue of whether the plaintiff is able to bring adequate proof of the genuineness of the promissory note in the manner canvassed by him and that a material alteration as stated by the defendant is found to exist; If it does exist, the consideration shall be whether the plaintiff has been able to explain that a correction made with the consent of parties. With regard to issue whether any change in the promissory note constitutes material alteration. Section 87 of the Negotiable Instruction Act renders any

material alteration in an instrument done otherwise on consent to render the instrument void. It has been held by Privy Council in *Pestonji Co. Vs. Corc Co. AIR 1928 PC 238* that alteration in date constitutes material alteration within definition mentioned in Section 87 of Negotiable Instrument Act. This Court has held in *Bhajan Kaur Vs. Tarlok Singh (2009) 156 PLR 482* that an alteration in month constitute material alteration. So long as there was no concurrence that alteration in date was in consent. The effect of instrument was rendered void, will place the burden of proof only on plaintiff and not on defendant in the manner that issue No.7 has framed. While upholding the order already passed, I direct the trial Court to mind the proposition as properly elucidated in this judgment and apply the same at the time of delivering the judgment.

4. The revision petition is disposed of.

(K. KANNAN)
JUDGE

May 20, 2015
Pankaj*