

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CR No.3204 of 2014  
Decided on: 02.03.2016**

Nawab Singh Manes

....Petitioner

Versus

Gur Lal Singh Manes

....Respondent

**CORAM: HON'BLE MRS JUSTICE REKHA MITTAL**

**Present :** Mr. Vicky Sharma, Advocate  
for Mr. Sapan Dhir, Advocate  
for the petitioner.

Mr. Parminder Singh, Advocate  
for the respondent.

**REKHA MITTAL J. (Oral)**

The present petition lays challenge to order dated 22.04.2014 passed by the Additional Civil (Senior Division) Assandh, District Karnal, whereby an application filed by the petitioner for comparison of signatures of Gur Lal Singh (respondent/defendant) affixed on the compromise dated 23.09.2013 with his admitted signatures on the agreement to sell dated 22.12.2005 by a Handwriting Expert has been dis-allowed.

Counsel for the petitioner would contend that the petitioner has filed a suit for specific performance of an agreement to sell dated 22.12.2005 purported to be executed by respondent for sale of suit property. The respondent, in the written statement,

has denied execution of the agreement but admitted his signatures on the agreement to sell with the plea that the same were obtained on the pretext of preparing a power of attorney. The petitioner adduced his evidence in regard to the agreement to sell as well as his readiness and willingness to perform his part of the contract. When the case was still pending for evidence of the petitioner/plaintiff, closed on 10.10.2013, the parties entered into a compromise dated 23.09.2013 (Annexure P-4).

The respondent appeared in the witness-box to support his defence plea and the compromise dated 23.09.2013 was put to him in cross-examination but he denied factum of compromise, execution of compromise deed-Mark D and his signatures on the same which has necessitated filing of the application for comparison of his signatures on the compromise with his admitted signatures on the agreement to sell. It is further argued that the reasons assigned by the learned trial Court in declining prayer of the petitioner cannot be allowed to sustain as the same are based on complete non-application of mind as well as contrary to facts on record. It is urged that as the compromise deed dated 23.09.2013 came into existence after the petitioner has already adduced his entire evidence and the petitioner could not anticipate that respondent would deny the compromise deed, there was no occasion for him to examine an expert to prove the compromise deed (Annexure P-4), while leading his evidence. It is further

submitted that as the document-Mark D came into existence during pendency of the suit, the same could not be a part of the pleadings as the suit was instituted in the year 2011 and the petitioner has already examined his witnesses prior to 23.09.2013.

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that the petitioner cannot be allowed to examine a Handwriting Expert in rebuttal as he failed to examine such a witness by leading evidence in affirmative *qua* issue, the onus whereof was on the petitioner/plaintiff.

I have heard counsel for the parties and perused the records.

The learned trial Court dismissed the application for the reasons recorded in para 3 of the impugned order and a relevant extract therefrom reads as follows:-

*“The application has been filed at a belated stage when the case is fixed for rebuttal evidence and arguments. The agreement to sell, which is in issue in this case, was within the knowledge of the plaintiff from the very beginning and forms the basis of his claim. The defendant has admitted the signatures thereon although, he has pleaded that his signatures were taken on the purported power of attorney. In any case, if the plaintiff wanted to get the signatures of the defendant on the said document compared, he could*

*have very well done it while leading evidence in affirmative. The compromise-Mark D admittedly does not form part of the pleading of the plaintiff. Hence, no ground is made out to allow this application at this belated stage since the plaintiff was aware of and in a position to lead the expert evidence while leading evidence in affirmative. It seems that the plaintiff now wants to fill up the lacuna in his case. Accordingly, the application is dismissed. However, nothing stated herein shall be deemed to be an expression of my opinion on merits of the case.”*

The learned trial Court has denied claim of the petitioner primarily on two counts. The agreement to sell, subject-matter of contest was within knowledge of the plaintiff from the very beginning and if the plaintiff wanted to get the signatures of the defendant on the said document compared, he could have done it by leading evidence in affirmative. The learned trial Court failed to consider that the petitioner did not seek permission for comparison of signatures of the respondent on the agreement to sell for the purpose of proving it. As the respondent has himself admitted his signatures on the agreement, there was no occasion for the petitioner to seek a report of a handwriting expert qua those signatures.

Another reason that weighed with the trial Court is that the compromise deed Mark-D is not a part of pleadings. The compromise-Mark D is purported to be executed during pendency

of suit and that too after the petitioner had already adduced his entire evidence. The Court is empowered to take into account the subsequent events. As the respondent has denied the compromise-Mark D put to him during cross-examination, the only course open to the petitioner to prove the compromise either by examining a witness thereto or on the basis of an opinion by an expert after comparison of signatures on the compromise with his (respondent's) admitted signatures on the agreement to sell. There was no occasion for the petitioner to examine an expert in affirmative to prove signatures of the respondent on the compromise, therefore, it cannot be said that the petitioner wants to examine an expert by way of rebuttal. Taken from any angle, neither the order passed by the trial Court requires affirmation nor the submissions made by counsel for the respondent are meritorious. As the compromise-Mark D amounts to an admission *qua* execution of agreement to sell, basis of the suit, it is expedient in the interest of justice to allow the petitioner to examine a Handwriting Expert to prove if the compromise-Mark D bears the signatures of the respondent/defendant.

For the foregoing reasons, the petition is allowed. However, the petitioner shall be entitled to two months time to complete the process of examination of the documents in question from an expert and adducing evidence of an expert witness but a copy of the report of expert would be supplied to counsel opposite

before the trial Court well in advance, to avoid further delay in conclusion of the proceedings pending since 2011.

Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

**(REKHA MITTAL)**  
**JUDGE**

**02.03.2016**

*yakub*