

Civil Revision No. 3582 of 2013

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In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 3582 of 2013
Date of Decision: July 23rd, 2016**

Amit Kumar

--- Petitioner

versus

Rambir Yadav and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Lokesh Sinhal, Advocate
for the petitioner
Mr. Sanjay Vij, Advocate
for the respondents**

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

Rekha Mittal, J.

The present petition has been directed against order dated 30.4.2013 (Annexure P-2) passed by the Addl.Civil Judge (Senior

Division), Gurgaon, dismissing application of the petitioner for issuance of direction to respondent No. 1 to give specimen signatures in Court.

Counsel for the petitioner would contend that the petitioner has filed a suit for possession by way of specific performance of agreement dated 21.6.2007 on the premise that Rambir Yadav respondent No. 1 agreed to sell a residential plot bearing No. 2739-A, Sector 57 HUDA Gurgaon for a sale consideration of Rs. 20,10,000/- out of which an amount of Rs. 5,00,000/- was paid as earnest money on the date of execution of the agreement.

Respondent No. 1 caused appearance before the trial court, filed the written statement whereby he denied execution of the agreement to sell dated 21.6.2007 with the averments that the agreement is a forged and fabricated document and the plaintiff/petitioner has committed fraud.

The petitioner filed an application under Section 73 of the Indian Evidence Act, 1872 (in short “the Act”) with a prayer that respondent No. 1 may be directed to provide his specimen signatures in order to enable the petitioner to get compared his signatures on the original agreement to sell with his specimen signatures to be given in the Court. It is further argued with vehemence that the learned trial court, without

appreciating the provisions of Section 73 of the Act in right perspective has dismissed the application, depriving the petitioner of his valuable right to seek necessary comparison from an expert and to substantiate his plea that the agreement in question was executed by respondent No. 1 and he is liable to perform his part of the agreement in compliance with the terms and conditions settled between the parties.

Counsel for respondent No. 2 (purchaser of suit property from respondent No. 1) has supported the impugned order with the submissions that the petitioner cannot be allowed to use process of the Court for collecting evidence. Respondent No. 1 has already filed his written statement denying the agreement to sell and he must have placed on record the power of attorney given to his counsel. If the petitioner so desires, he can use signatures of respondent No. 1 available on the written statement and power of attorney for the purpose of comparison. It is further argued that as the petitioner has not adduced any evidence by the time the application (Annexure P1) was filed, there is no occasion that signatures of respondent No. 1 are required by the court for the purpose of comparison, as has been envisaged in Section 73 of the Act.

Another submission made by counsel is that as respondent

No. 1 absented from the proceedings and has been proceeded against ex parte, he cannot be deemed to be present in Court to apply Section 73 of the Act. To substantiate his contention, he has referred to the dictionary meaning of the word 'ex parte' from the Law Lexicon wherein its meaning has been given as under:-

“Ex parte- of the one part; from one party (Tomlin's Law Dic.).

This term is applied in law to a proceeding by one party in the absence of, and without notice to, the other.

On or from one side only.

A person who obtains an ex parte decree is responsible for slips in the decree [16 CWN 793=14 Bom LR 1223=17 CLJ 14=23 MLJ 738=10 ALJ 379= (1912) MWN 1151= 12 MLT 492=16 IC 830 (PC)]

Even giving to the expression 'ex parte' its plain natural meaning, the expression ' ex parte' does carry with it the connotation that a court or a Judge or a Tribunal has proceeded in the absence of other party which it could have had the other party before it or when its was not presented by law from having the other party before it. P.N. Fibrous Ltd. vs. Overseas

Films corporation Ltd., AIR 1958 Bom 10.12 [Civil Procedure Code 1908. O.9.R.13].

I have heard counsel for the parties, perused the paper book with the able assistance of counsel for the parties.

Before advertng to the submissions made by counsel, it is appropriate to note that on 8.12.2014, this Court framed the following questions, inviting answer:

(1)Whether defendant No. 1 who is not contesting the suit could be asked by the Court to appear and give his specimen handwriting/signatures for the purpose of comparison?

(2)Whether mere impleadment of defendant No. 1 as a party to the suit would mean that he is present in Court?”

Section 73 of the Act relevant and germane to determine the aforesaid questions, reads as follows:-

“Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or

made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. This section applies also, with any necessary modifications, to finger-impressions.

Section 73 empowers the Court to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. The earlier part of Section 73 provides that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The words 'any person present in the Court' does not refer to a person physically present in the court. On the

contrary, it refers to such person(s) who are parties to a cause pending before the Court and in the given case may even include the witnesses in the said cause. However, to invoke the provisions of Section 73 of the Act, it is sine qua non that a cause must be pending before the Court for its determination before any person is called upon to give his specimen handwriting/signatures. The mere fact that a defendant has either not put in appearance at all or has absented from proceedings at an intermediate stage cannot be construed to mean that he is not present in Court. To say it differently, the mere fact that a defendant has been proceeded ex parte does not render the Court handicap/helpless in calling upon that defendant to give his specimen handwriting/signatures for the purpose of comparison envisaged under Section 73 of the Act. In this view of the matter, the questions aforesaid are answered accordingly.

This brings the Court to another important aspect of the matter as to whether the court under Section 73 can exercise power for the purpose of comparison by the Court itself only or can invoke such power to make available signatures/handwriting of an adversary at the instance of other party. A Division Bench of this Court in ***Guru Nanak Construction Company vs. M/s Jai Bharat Steel Rolling Mills 1976 RLR 648*** has held

that power under Section 73 may be exercised by the Court for its own satisfaction or even on an application being made by any party to the proceedings. If these Sections (45 and 73) are interpreted to mean that this can only be done by the Court for its satisfaction that would perpetuate injustice. In that case, persons who may have written or signed valuable documents and on mere denial on their behalf about the said documents having been signed or written would render the aggrieved party without the remedy of getting the disputed signatures or writing compared and proved to the satisfaction of the Court that the said documents were signed or written by the defaulting party. The provisions have to be interpreted so as to give the fullest meaning with a view to do justice between the parties. When a dispute regarding the signatures or handwriting is before the court, it is always the endeavour of the Court to reach at a correct conclusion and without this power having been exercised, whether suo motu or at the instance of the aggrieved party, the decision on these matters is likely to be made without the assistance of the experts inspite of such expert's evidence having been made relevant under the provisions of Section 45 of the Act.

Counsel for the petitioner has not disputed that respondent No. 1 has already filed his written statement controverting the allegations

set up in the plaint. It is not plea of the petitioner that he (respondent No. 1) has not appended his signatures on the written statement and Power of Attorney given to his counsel. As in the present case, signatures of respondent No. 1 are available on the documents produced by him in the Court, there is no reason to interfere in the order impugned or require respondent No. 1 to give his specimen signatures for the purpose of comparison by the petitioner. The reasoning adopted by the trial court to reject the application does not appear to be well founded but still the petitioner, in the circumstances of the case, is not entitled to any relief.

In view of what has been discussed hereinabove, the petition stands disposed of.

(Rekha Mittal)
Judge

July 23rd, 2016
PARAMJIT