

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

CR No.3437 of 2014(O&M)

Date of decision:25.5.2016

Shri Tirath Singh Mor

....Petitioner

VERSUS

Arjun Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Sumit Gupta, Advocate for the petitioner.

Mr. Yeshpal Malik, Advocate for the respondent.

REKHA MITTAL, J.

Challenge in the present petition has been laid to orders dated 13.02.2014 (Annexure P-5) and dated 22.04.2014 (Annexure P-8) passed by the Additional Civil Judge (Senior Division), Gohana, dismissing application of the petitioner/defendant for comparison of signatures and summoning the records of P.A.C.S.

Counsel for the petitioner would contend that the respondent/plaintiff has filed a suit for recovery of Rs.83,000/- along with interest at the rate of 18% per annum on the premise that he used to sell his agricultural produce through firm of the petitioner/defendant. On 09.08.2007, the account was settled and an amount of Rs.83,000/- became due towards the petitioner and in this regard, the petitioner has executed a writing/receipt in favour of the respondent/plaintiff.

In the written statement filed by the petitioner/defendant, it has been pleaded that the plaintiff used to borrow money from time to time and he is under liability to pay an amount of Rs.15,45,188/- as on 31.03.2008. It is urged that the respondent appeared in the witness box to substantiate his claim and in cross examination, he has admitted his signatures on the account being maintained by the petitioner in regard to money borrowed by the respondent from time to time. However, the respondent refused to admit signatures of Anil, his son, who received money being son of the respondent and appended his signatures. It is argued that it is expedient in the interest of justice that sample/standard signatures of Anil are compared with his disputed signatures available in the account books maintained by the firm namely Akash Trading Company carrying on the business of Commission Agency. It is further argued that the learned trial Court committed a gross error rather illegality in dismissing the application for comparison of signatures and summoning the records of P.A.C.S. Ward No.6, Gohana, in respect of Account No.249 pertaining to Anil son of Arjun.

Counsel for the respondent, on the contrary, has submitted that a similar application was filed by the petitioner on an earlier occasion that came to be dismissed by the trial Court vide order dated 13.02.2014 (Annexure P-5). The petitioner did not challenge the order dated 13.02.2014, therefore, the second application filed by him for the same relief cannot be maintained and has rightly been dismissed by learned trial Court. It has been argued that the petitioner has neither claimed any set off nor filed any counter claim with regard to alleged liability of the respondent to pay an amount of Rs.15,45,188/- as on 31.03.2008,

therefore, the petitioner is not entitled to adduce any evidence qua alleged liability of the respondent.

In response, counsel for the petitioner has submitted that the earlier application was dismissed by the trial Court on the ground that the original account books maintained by the applicant/defendant are not available on record. Later, the original account books have been produced and in view of the changed circumstances, the petitioner is competent to maintain another application for comparison of signatures of son of the respondent.

I have heard counsel for the parties, perused the paper-book particularly the orders impugned (Annexures P-5 and P-8).

The respondent/plaintiff has filed a suit for recovery of Rs.83,000/- towards price of the produce sold by him through the commission agency of the petitioner. In the written statement, the petitioner/defendant has taken a plea that an amount of Rs.15,45,188/- as on 31.03.2008 is outstanding against the respondent/plaintiff. There is nothing on record suggestive of the fact that the petitioner has filed a suit for recovery of Rs.15,45,188/-. Concededly, in the present *lis*, the petitioner has neither sought any set off nor filed a counter claim with regard to recovery of an amount of Rs.15,45,188/-. The respondent/plaintiff in his cross-examination has admitted his signatures in the account books maintained by the firm of the petitioner. The son of the respondent/plaintiff is not a party in the present litigation.

The petitioner earlier filed an application for comparison of signatures of the respondent and his son but the same was dismissed by the trial Court vide order dated 13.02.2014 (Annexure P-5) primarily on two

grounds namely that as the defendant has neither claimed set off nor has filed counter claim, the Court fails to understand what useful purpose would be served by asking the plaintiff and his son to give specimen signatures for comparison with signatures which allegedly appear in the account books maintained by the applicant/defendant. Another reason that weighed in the mind of the trial Court is that the account books in original are not on record.

One of the reasons that persuaded the trial Court to dismiss the earlier application ceased to exist with production of original account books before the trial Court. Counsel for the petitioner is not in a position to justify filing of second application in the face of observations of the trial Court that no useful purpose would be served by asking the plaintiff and his son to give specimen signatures for comparison as the defendant/petitioner has neither claimed set off nor filed a counter claim. I find merit in contention of the respondent that during subsistence of order dated 13.02.2014, the petitioner is not competent to maintain another application seeking comparison of signatures of the respondent or his son with the alleged signatures in the account books maintained by the firm. This apart, the trial Court has rightly held that as the petitioner has neither claimed set off nor filed any counter claim on the basis of alleged entries in the account books maintained by the firm, no useful purpose would be served by comparison of signatures of the respondent/plaintiff or his son. Counsel for the petitioner has not made any submission with regard to rejection of his claim for seeking production of records from P.A.C.S. pertaining to Account No.249 of Anil son of Arjun. Analyzed from any

angle, I do not find any error much less illegality in the impugned orders warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

MAY 25, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE