

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

**Civil Revision No.5127 of 2015**

**Date of decision : 28.03.2016**

**Dr. Jai Dev (since deceased) through his LRs.**

.....Petitioners

*Versus*

**Swami Pragyanand Ji Education Society and another**

...Respondents

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

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

Present: Mr. Sandeep K. Sharma, Advocate for petitioners.

Mr. Ramesh Sharma, Advocate for respondents.

\*\*\*\*

**DARSHAN SINGH, J.**

The present revision petition has been preferred against the order dated 23.07.2015 passed by learned Civil Judge (Junior Division), Nakodar, vide which the application moved by the petitioners (legal representatives of deceased plaintiff Dr. Jai Dev) to examine the handwriting expert for comparison of the signatures of deceased plaintiff Dr. Jai Dev, has been dismissed.

2. Learned counsel for the petitioners contended that plaintiff Dr. Jai Dev has filed the suit for recovery of Rs.5,77,333/- on

account of the arrears of salary/examination remuneration fees/damages along with interest. The relief of mandatory injunction has also been sought directing the defendants to release the salary of the plaintiff. He contended that in the written statement the defendants/respondents have taken the plea that the plaintiff has concealed the material facts and issue No.4 was framed by the learned trial Court. The burden to prove this issue was upon the defendants. He contended that the petitioners had a right to lead the rebuttal evidence under Issue No.4, as the defendants have taken the plea in the written statement that the fact regarding resignation has been concealed by the plaintiff. He contended that the petitioners wanted to examine the handwriting expert to get the signature of deceased-plaintiff Dr. Jai Devi compared to show that he had never submitted any resignation. To support his contentions, he relied upon cases *Surjit Singh & Ors. Vs. Jagtar Singh & Ors. AIR 2007 (P&H) 1, Pappu @ Rai Singh Vs. Smt. Chander Wati and others 2012(4) PLR 607* and *Hazari Vs. Har Pal and others CR No.4097 of 2015 decided on 03.7.2015*.

3. On the other hand, learned counsel for the respondents contended that Issue No.4 was only a formal issue. The plaintiff was to prove his case in affirmative as to how he was entitled for the amount claimed in the suit. The defendants have taken the plea in the written statement that he has resigned, so the plaintiff should have been lead the evidence in affirmative and has no right to lead the evidence in rebuttal. Thus, there is no illegality in the impugned order.

4. I have duly considered the aforesaid contentions.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for the recovery of Rs.5,77,333/- along with interest as prayed? OPP
2. Whether the plaintiff is entitled for mandatory injunction directing the defendant to release the salary of plaintiff along with dues and interest as prayed? OPP
3. Whether plaintiff is estopped to file the present suit by his own act and conduct? OPD
4. Whether plaintiff has concealed the material facts from the Court? OPD
5. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
6. Relief.

6. The aforesaid issues have been framed by the learned trial Court taking into consideration the plaint, written statement and replication. In the replication filed by the plaintiff, he has categorically mentioned that he never tendered any resignation at any point of time. He would have been entitled for the recovery of the arrears and the mandatory injunction claimed by him in the suit, only if he was proved to be in service. The burden to prove issues No.1 & 2, reproduced above, was upon the plaintiff. Under the aforesaid issues, the plaintiff was required to show that he was entitled for recovery of Rs.5,77,333/- along with interest and for issuance of mandatory injunction directing the defendants to release the salary. Under these issues, the plaintiff was required to lead the evidence in affirmative to prove his case.

7. Moreover, in the application moved by the petitioners a totally different plea has been raised. It is nowhere mentioned in the application that the petitioners want to lead the rebuttal evidence, rather the application has been filed to examine the handwriting expert for comparison of signatures of deceased plaintiff Dr. Jai Dev. In the application, it is pleaded that defendants have filed the application for comparison of signatures of deceased Dr. Jai Dev from the Director, Finger Prints Bureau, Phillaur, but they have examined a private handwriting expert and as such, his report cannot be looked into being beyond jurisdiction, who had totally deposed in favour of the defendants. It is further pleaded that the said report appears to have been procured by the defendants and cannot be used against the plaintiff in any manner. It is further pleaded that for the just and proper adjudication of the matter in dispute, the petitioners want to examine another independent handwriting expert for comparison the signature of deceased plaintiff Dr. Jai Dev, so that the real truth is brought before the Court. Thus, the aforesaid application moved by the petitioners appears to be an application for additional evidence as there is no need to move any application to lead the rebuttal evidence. It appears that they only want to lead evidence in order to rebut the testimony of the expert witness examined by the defendants.

8. I have perused the order dated 10.02.2015 passed by learned Civil Judge (Junior Division), Nakordar allowing the application of the defendants for examination of the expert. In that order, it is

nowhere mentioned that the defendants will be entitled only to examine the government expert. Rather the learned Civil Judge has granted opportunity to the defendants to get compared the disputed signatures with the admitted signatures of the plaintiff through the handwriting expert after taking the photographs of the signatures of the plaintiff on the documents in the presence of the counsel for the plaintiff/LRs of the plaintiff. So, no fault can be found in the examination of the private expert by the defendants.

9. It is also not disputed that the expert witness examined by the respondents-defendants has been cross-examined by the handwriting expert of the petitioners. Thus, the contentions advanced by the learned counsel for the petitioners before this court are not in consonance with the pleas raised in the application. The real intention of the petitioners is only to rebut the expert evidence adduced by the defendants-respondents in their evidence and not to lead the rebuttal evidence on any issue. It is settled principle of law that the rebuttal evidence can only be allowed on the issue, the burden of proof of which is on the defendant and not just to rebut the evidence adduced by the defendants. The cases relied upon by the learned counsel for the petitioners are quite distinguishable on facts.

10. Thus, I do not find any illegality in the impugned order passed by learned trial Court.

11. Consequently, the present petition, having no merits, is hereby dismissed.

**28.03.2016**

*sunil yadav*

**( DARSHAN SINGH )  
JUDGE**