

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

**CR No.5203 of 2016(O&M)**

**Date of decision:16.8.2016**

Vinod Bhadana

....Petitioner

VERSUS

Rajiv Grewal

.....Respondent

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

Present: Mr. Kunal Dawar, Advocate for the petitioner.

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**REKHA MITTAL, J.**

The present petition has been directed against order dated 04.07.2016 (Annexure P-1) passed by Civil Judge (Junior Division), Faridabad whereby application filed by the petitioner/plaintiff for adducing additional evidence has been dismissed.

The petitioner/plaintiff has filed a suit for specific performance of agreement to sell dated 31.07.2001 with alternative relief for recovery of Rs.2,50,000/- with interest. After the parties have already adduced their evidence, the instant application was filed on the premise that respondent/defendant has denied his signatures on agreement to sell and receipt and the same are required to be verified through Forensic Science Laboratory (in short 'FSL') for proper adjudication of the case.

After having heard counsel for the parties and bestowing its consideration to the averments set up in the application and reply thereto, the learned trial Court after referring to judgment of Hon'ble the Supreme Court K.K. Velusamy Vs. N. Palanisamy, 2011(2) RCR (Civil) 875, has

held that the application has been filed at the stage of rebuttal and at such a belated stage the plaintiff cannot be allowed to prove such evidence which ought to have been examined previously. Another reason that weighed in the mind of trial Court is that the plaintiff cannot be allowed to make good the lacunae in his case.

Counsel for the petitioner has submitted that sending the documents to the FSL and getting report from an expert would enhance the cause of substantial justice when otherwise no prejudice would be caused to the respondent if such a recourse is allowed to be adopted, therefore, the trial Court has committed an error rather illegality in dismissing the application. It is further argued that Section 73 of the Indian Evidence Act, 1872, empowers the Court to examine and compare the signatures on its own or seek the report of an expert.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to note that after the application in question was dismissed, another application was filed by the petitioner for verification of signatures of the defendant from fingerprints expert as his sample signatures are available on the written statement, Vakalatnama and statement made in the Court. The said application was dismissed by the Court on 26.07.2016. The present petition has been filed by the petitioner on 09.08.2016, subsequent thereto. As the petitioner filed another application seeking comparison of the disputed signatures of the defendant with his sample signatures available on the documents on record, it is sufficient to show that the petitioner was satisfied with the order of the trial

Court rejecting his prayer for seeking an opinion from the FSL. This apart, as the respondent had denied his signatures on the agreement to sell with the plea that neither he entered into an agreement nor was liable to perform his part of the alleged agreement, the petitioner knew from day one even before the issues were framed that the respondent/defendant denied the agreement to sell. The petitioner for the reasons best known did not think it fit to examine an expert in his affirmative evidence but tried to find a way out to seek the report of an expert at the stage when the case was fixed for his rebuttal evidence. The trial Court has rightly held that the petitioner can neither be allowed to adduce such an evidence at the stage of rebuttal nor can he be allowed to fill up the gaps and lacunae left in his case.

In this view of the matter, I do not find any error much less illegality in the impugned order as would call for intervention.

Dismissed in limine.

**AUGUST 16, 2016**

‘D. Gulati’

**(REKHA MITTAL)**

**JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no