

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5691 of 2015

Date of Decision: 22.03.2016

Ram Kumar

... Petitioner(s)

Versus

Ram Parshad

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Inderjeet Singh, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 20.8.2015, passed by learned Civil Judge (Junior Division), Jagadhri, whereby application, filed by plaintiff for leading additional evidence so as to examine Handwriting Expert to compare the signatures and handwriting of the defendant, was dismissed.

Learned counsel for the petitioner submitted that it had come in the cross-examination of defendant that he refused his signatures and handwriting and petitioner wanted to get the same compared from Handwriting Expert and an application for additional

evidence was filed for that purpose. In support of his arguments, learned counsel for the petitioner placed reliance upon the judgments rendered by the Hon'ble Supreme Court in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India 2005(3) RCR (Civil) 530*** and view taken by the coordinate Benches of this Court in ***Kulwant Singh v. Chand Singh etc. 2015(3) PLR 129, Government Senior Secondary School, Kherki Daula, Tehsil Sohna, District Gurgaon v. Lilu Ram and Others 2013(1) RCR (Civil) 520*** and ***Hans Raj v. Surinder Kaur and Others 2010(2) CivCC 377***.

Having considered the submissions made by learned counsel for the petitioner; gone through record of the case and the judgments referred to and relied upon by learned counsel for the petitioner, this Court is of the considered view that as per amended provisions of Code of Civil Procedure, application for additional evidence under Order 18 Rule 17A CPC is not maintainable. More so, such an evidence cannot be led by invoking the inherent powers under Section 151 CPC. However, the Court has got power to allow application for additional evidence under Order 18 Rule 3 CPC if the Court comes to the conclusion that the said evidence could not be led by plaintiff when he was given an opportunity to lead the evidence.

In the present case, defendant had taken a specific stand in the written statement itself that entry in the *bahi* dated 8.1.1990 is not in his hand and the same does not bear his signatures. That way, this fact was well within the knowledge of the present petitioner that the

defendant has denied his signatures on the *bahi* and plaintiff was to examine the expert witness at the time of leading evidence when due opportunity was given to him. The evidence, which was required to be led in affirmative, cannot be allowed by invoking inherent powers under Section 151 CPC so as to allow the additional evidence and the Court has rightly declined the application. The Court below has rightly observed that this fact was in the knowledge of the plaintiff from the very beginning and petitioner has simply taken the plea that it had come in the cross-examination of the defendant, whereas this fact was denied in the beginning by filing the written statement. More so, admitted signatures of the defendant were available on the file i.e. on the written statement and power of attorney itself and these facts were also in the knowledge of the present petitioner. As per view taken by the Hon'ble Apex Court in ***Salem Advocate Bar Association's case*** (*supra*), for seeking the additional evidence, the party has to satisfy the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such an evidence at a later stage on such terms as may appear to be just. However, in the present case, reply to both the above observations are certainly in negative because the fact was very well within the knowledge of the petitioner right from the date of filing of the written statement. Thereafter, the petitioner could lead the evidence by way of examination of expert witness when due opportunity was given. The Court below has rightly dismissed the application for leading additional evidence.

In view of above, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

March 22, 2016
"DK"