

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

**CR No.5910 of 2016
Decided on.09.09.2016.**

Mohd. Yamin

.....Petitioner

Versus

Abdul Hamid and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Roopak Bansal, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 26.07.2016 passed by the learned Additional District Judge, Faridabad, whereby the application moved by the petitioner-appellant-defendant under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (for short C.P.C.) has been dismissed by the learned First Appellate Court.

2. Petitioners moved the application for additional evidence on the ground *inter alia* that they had not executed the alleged agreement to sell/receipt Ex.P-2, but even then the suit has been decreed by the learned trial Court for specific performance of agreement to sell. Petitioners requested the learned First Appellate Court to send the original agreement Ex.P-2 for comparison of signatures with the admitted signatures of the petitioners to the govt. hand writing and finger print expert, F.S.L, Madhuban. It was further pleaded that appellants-petitioners are running the risk by filing the application supported by the affidavit and in case their version is found

wrong, they can be prosecuted. It was further pleaded that no prejudice will be caused to the respondents in sending the document Ex.P-2 to the F.S.L, Madhuban for comparison.

3. This application has been contested by the respondents on the grounds *inter alia* that the present application has been moved only with a view to delay the proceedings. It is not explained as to why this request was not made when the matter was pending before the learned trial Court and as to how the examination of the document by F.S.L was essential for the just decision of the case. It was further pleaded that the execution of the document in question has been otherwise proved by cogent and oral evidence adduced by the respondents. With these pleas, respondents pleaded for dismissal of the application.

4. On appreciating the contentions raised by learned counsel for the parties, the learned Additional District Judge, Faridabad, dismissed the application moved by the petitioners. Hence this revision petition.

5. I have heard Mr. Roopak Bansal, Advocate, learned counsel for the petitioners and have carefully gone through the paper book.

6. Initiating the arguments, learned counsel for the petitioner contended that both the parties have produced their hand writing experts during the trial and both of them have given the reports in favour of their pay masters. He contended that in order to ascertain the real facts, the petitioners had moved the application that the agreement/receipt Ex.P-2, which was never executed by the petitioners-

defendants, be sent F.S.L. Madhuban for comparison. He contended that no prejudice will be caused to the respondents. The report of the govt. hand writing expert will assist the Court in arriving at the just conclusion of the case.

7. I have duly considered the aforesaid contentions. Even as per the contentions raised by learned counsel for the petitioners, both the parties have examined their hand writing experts at the time of trial. He has further contended that both the reports were discarded by the learned trial Court as they had made the reports in favour of their pay masters. It shows that the learned trial Court has relied upon the other evidence adduced by the parties in order to arrive at the conclusion.

8. As per the provisions of Order 41 Rule 27 CPC, the additional evidence at the earlier stage could only be allowed where the Court, from whose decree the appeal is preferred, has refused to admit the evidence, which ought to have been admitted. This clause is not applicable in this case. The additional evidence can also be allowed where such evidence could not be produced notwithstanding the exercise of the due diligence that is also not the case as the petitioners could have move this application even at the stage of trial. The learned First Appellate Court has categorically mentioned in the impugned order that the interest of justice does not require for sending the agreement to sell to the F.S.L. So, the learned First Appellate Court does not require the report of the F.S.L to enable it to pronounce the judgment. In the impugned order it has also been mentioned that the present application has been moved after availing various adjournments for addressing the arguments. So, the application moved by the

petitioners does not seems to be *bona fide* and it appears to be an attempt on the part of petitioners just to delay the proceedings.

9. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order passed by the learned trial Court, which does not call for any interference by this Court.

10. Resultantly, the present revision petition having no merits, is hereby dismissed.

(DARSHAN SINGH)
JUDGE

09.09.2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No