

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

Civil Revision No.8665 of 2014

Date of Decision: 23.11.2016

Smt. Madhu Sharma @ Madhu Bala

.....Petitioner

Vs

Renu Goyal

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. P.R. Yadav, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 05.12.2014 passed by Civil Judge (Sr. Divn.) Mewat vide which application filed by the petitioner/defendant for leading additional evidence by way of examination of handwriting expert was rejected.

[2]. Brief facts are that the plaintiff/respondent filed a suit for possession by way of specific performance and permanent injunction on the basis of agreement to sell dated 04.08.2006. It was alleged that at the time of execution of agreement to sell, entire payment was made and possession was duly delivered to the plaintiff/respondent. The target date for execution of sale

deed was to be fixed, as and when the plaintiff called the defendant to do at her own expenses. It was asserted by the plaintiff that despite request, defendant did not turn up. A legal notice was issued to the defendant for execution of sale deed. On 21.11.2006, defendant/petitioner denied the execution of the agreement in reply to the said legal notice dated 13.11.2006. Thereafter suit in question was filed.

[3]. Since the execution of agreement to sell was denied by the defendant, therefore, it was asserted that the defendant never purchased the stamp paper, nor appeared before the scribe or got the agreement to sell drafted. It was asserted that the plaintiff/respondent used to visit the house of the defendant and got some blank paper signed under the pretext of getting the husband of the defendant released on bail as the husband of the defendant was facing trial in some criminal case. Fraud was alleged in obtaining the signature of the defendant by way of deception.

[4]. After completion of pleadings, issues were framed. Defendant/petitioner got examined her witnesses including herself. Plaintiff/respondent got examined Harsh Kumar, Advocate, who allegedly prepared the agreement to sell. Harish Kumar, Advocate while appearing as PW-1 stated that the

defendant had instructed him to prepare the agreement to sell. However son of the defendant went to him and while talking with him, son of the defendant got recorded the conversation in his mobile, wherein the said witness Harish Kumar, Advocate had admitted some glaring facts about the execution of the alleged agreement to sell.

[5]. Defendant/petitioner then moved an application for recalling of Harish Kumar, Advocate who was earlier examined, for the purposes of getting his voice compared. The said application was allowed by the trial Court on 08.08.2014. Thereafter the defendant/petitioner moved an application to summon the handwriting expert and sought the permission of the Court for depositing the diet money. Petitioner deposited the diet money vide application No.451 dated 19.09.2014 and the same was allowed by the Civil Judge (Sr. Divn.) Nuh (Mewat) for summoning the handwriting expert. Thereafter, the witness after obtaining the photographs of the disputed signatures as well as the admitted signature appearing in the written statement and *vakalatnama* of the defendant/petitioner, got the comparison and ultimately reached at the conclusion that the signature appearing on the register of the stamp vendor did not tally and was the result of forgery.

[6]. The expert witness was produced in the witness box and his affidavit was tendered in examination-in-chief. The cross-examination of the witness was deferred. Thereafter defendant/petitioner moved an application by stating the circumstances leading to the filing of the application for additional evidence. The defendant/petitioner submitted that Harish Kumar, Advocate had admitted during conversation that the agreement to sell was not drafted by him in the presence of the defendant and had admitted that the defendant Madhu Sharma @ Madhu Bala was not present at the time of alleged drafting of the agreement.

[7]. DW-3 Mahender stamp vendor was examined before the trial Court, who pleaded ignorance about the signature appearing at serial No.8273 allegedly belonging to the defendant/petitioner. The witness pleaded ignorance as to who had purchased the said stamp paper entered at serial No.8273.

[8]. Defendant/petitioner submitted that earlier an application for summoning the expert witness Sh. Naresh Katariya was filed under the impression that the same was allowed in *toto*. The witness thereafter obtained the photographs of the disputed and specimen signature of the defendant/petitioner and submitted his report that the signature

appeared against serial No.8273 in the record register of Mahender stamp vendor was forged and the signature did not tally with the specimen signature of the defendant. The evidence of the expert witness was necessary for just decision of the case. The case was fixed for the defendant's evidence. The examination-in-chief of the expert witness was already submitted and the learned counsel for the plaintiff objected for conduct of cross-examination of the witness on the ground that the name of the witness was not mentioned in the earlier application as well as in the order when earlier application was allowed.

[9]. At the time of issuance of notice of motion, this Court passed the following order on 18.12.2014:-

“Learned counsel for the petitioner inter alia contends that stage of the suit is for additional evidence of the petitioner-defendant. The handwriting expert has prepared the report of comparison of the signatures on the register of the stamp vendor with the standard signatures and handwriting expert also stepped into the witness box but his cross-examination was deferred. Since the name of handwriting expert was not mentioned in the list of witnesses, his cross-examination was not allowed and application was ultimately dismissed.

Notice of motion for 07.04.2015.

In the meanwhile, passing of final order by the trial

Court is stayed. However, proceedings before the trial Court shall continue.”

[10]. Learned counsel for the petitioner vehemently contended that since the examination-in-chief of the witness has already been conducted, therefore, even if, the evidence of the defendant was closed by order on 19.07.2013, the prayer can be accepted particularly, when on 19.07.2013 itself the application for summoning of Harish Kumar, Advocate was filed for his voice recognition and the same was allowed vide order dated 08.08.2014. Apparently, petitioner is defendant in the suit. After closing of the evidence of the defendant, application for summoning Harish Kumar, Advocate was allowed and in a way, evidence of the defendant was reopened.

[11]. Learned counsel for the petitioner further contended that on the application dated 19.08.2014, filed by the defendant/petitioner to summon the handwriting expert, the Court vide order dated 19.09.2014 allowed deposit of Rs.200/- vide application No.415. Even the examination-in-chief was tendered by the expert witness. It was only the cross-examination of the witness, which was deferred. The evidentiary value of the testimonies of the witness would be gone into by the trial Court at the relevant stage. Petitioner being the defendant cannot be denied to lead expert evidence on the

premise that she cannot lead evidence after by passing the stage of rebuttal or in respect of an issue, the onus of which was on the plaintiff. No such controversy is involved in the present case. Here is a case of additional evidence, which does not define the stage.

[12]. Learned counsel for the petitioner relied upon **Banwari vs. Nagina, 1998(2) RCR (Civil) 45; Hazara Singh vs. Bachan Singh, 1998(2) RCR (Civil) 357; Omwati vs. Anita Devi & Ors., 2016(1) Law Herald 301; Gurdev Singh and others vs. Karnail Singh and others, 2016(1) PLR 264** and **Pawan Kumar vs. Raj Kumar and others, 2007(1) RCR (Civil) 385** to contend that the additional evidence can be led at any stage of the litigation, if the Court is satisfied that the evidence is required for just and effective decision of the case. The Court becomes *functus officio* only after pronouncing the judgment, till such time Court is competent to take evidence, if the same advances substantial cause, then the Court may allow production of such document by way of additional evidence.

[13]. On the other hand, learned counsel for the respondent relied upon **Ram Kumar vs. Raj Kumar and Ors., 2014(2) PLR 536** to contend that the expert evidence cannot be allowed in rebuttal and cannot be allowed to be examined by way of

additional evidence. The evidence was well within the knowledge of the petitioner at the time of leading his evidence in affirmative.

[14]. I have considered the submissions made by the learned counsel for the parties.

[15]. It is true that the evidence of the defendant/petitioner was closed on 19.07.2013, but thereafter Harish Kumar, Advocate was allowed to be summoned for the purposes of getting his voice recognition. It was not a case of leading evidence in rebuttal because petitioner is a defendant in the suit. The controversy of the present type falls within the four corners of leading additional evidence, since examination-in-chief of the witness has already been tendered. Even the application was also allowed, when the trial Court allowed deposit of Rs.200/- vide application No.451 dated 19.09.2014. Once recalling of Harish Kumar, Advocate was allowed for the purposes of his voice comparison, alleged revelation made by him would go in a way to bring out the truth (if any) on record by way of examination of expert witness.

[16]. Though at this stage, this Court would refrain itself from observing anything on the veracity or otherwise of the evidence to be led by the parties on record, but for the purposes of

advancing the trial, it would be just and appropriate to allow the defendant/petitioner to examine the expert witness. Plaintiff would be at liberty to cross-examine the witness and would be having right to rebut the same.

[17]. In view of aforesaid, I am of the considered opinion that impugned order dated 05.12.2014 passed by the Civil Judge (Sr. Divn.) Mewat is not sustainable in law. Consequently, the same is set aside. Petitioner is entitled to lead additional evidence by way of examination of handwriting expert. Revision petition is accordingly allowed. Necessary follow up action may be allowed by the trial Court.

November 23, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No