

116.

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

Civil Revision-1379-2017

Date of decision:23.02.2017

VARINDER KUMAR KANOJIA

... Petitioner

versus

BRIJ MOHAN GUPTA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ram Kumar Saini, Advocate,
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition impugning the order dated 09.02.2017 (Annexure P-5) passed by learned Civil Judge (Junior Division), Ambala whereby the application filed by the plaintiff (petitioner herein) for directing the defendant (respondent herein) to give his specimen handwriting and specimen signatures and also to produce his son Kapil Mahawar to give his specimen handwriting and signatures for comparison with the handwriting and endorsement (Ex.P2) by the handwriting expert in rebuttal, was dismissed.

Briefly stated, the petitioner had filed a suit for specific performance of an agreement to sell dated 02.06.2009 executed by the respondent-defendant in favour of the plaintiff for the sale of suit property situated at Lal Kurti Bazar, Ambala Cantt. Consequential

relief for decree of permanent injunction restraining the respondent-defendant from selling, alienating and transferring the suit property has also been sought for. During the pendency of suit when the issues were framed and the petitioner had produced his evidence in affirmative, the case was fixed for defendant's evidence who appeared as DW-1, but the said witness intentionally and willfully denied his signatures on the agreement to sell. Signatures of his son Kapil Mahawar, who signed as a witness, have also been denied. The defendant has denied his own signatures as well as the signatures of his own son-Kapil Mahawar, due to which it became essential for the petitioner to produce a handwriting expert so as to bring a clear picture before the trial Court. Therefore, an application dated 17.01.2017 for directing the respondent-defendant to give his specimen handwriting and specimen signatures and also to produce his son Kapil Mahawar to give his specimen handwriting and signatures for comparison with signatures already appended on the agreement to sell, was filed. But the said application was dismissed vide order dated 09.02.2017 (Annexure P-5). It is the said order which has been challenged through the instant revision petition.

Learned counsel for the petitioner has argued that if the petitioner is not allowed to produce handwriting expert in rebuttal, he would suffer irreparable loss and injury. Procedure is only handmaid of justice and the merits of a case cannot be altered in the name of technicalities of procedure. The trial Court has committed a grave illegality by debarring the petitioner, to produce the evidence in

rebuttal for the purpose of proving his case. In support of his contention, he has referred to the judgment of this Court rendered in **Ranjit Singh Versus Mehfil Restaurant-2008(1) R.C.R. (Civil) 768.**

I have heard learned counsel for the petitioner.

The settled position of law is that in order to prove the case, the plaintiff has to stand on his own legs. The defendant has denied the very execution and his signature on the agreement to sell (Ex.P2) in his written statement. Therefore, it was for the plaintiff to give evidence in affirmative, but in rebuttal, he has moved the application. The right to lead evidence in rebuttal arises only if the defendant had led any evidence in affirmative on the issue. Therefore, the evidence to be led in rebuttal cannot be permitted on an issue of which the onus was on the party in affirmative as has been held by this Court in **Ram Kumar Versus Raj Kumar and others-2014 (3) CCC 453 (P&H)** that the handwriting expert cannot be allowed to be examined in rebuttal and even cannot be allowed to be examined by way of additional evidence, as the evidence was well within the knowledge of the plaintiff at the time when he was leading evidence in affirmative.

So far as the judgment referred to by the learned counsel for the petitioner in **Ranjit Singh's case** (supra), the same is not applicable to the fact and circumstances of the present case, as in that case when the plaintiff concluded his evidence, onus whereof was on the plaintiff, whereas when the defendant is leading evidence on issues, onus whereof was on the defendant, and if the defendant

produces some documents to discharge the burden, the plaintiff has every right to rebut those documents by leading rebuttal evidence. But here in the case in hand, instead of leading any document for rebuttal evidence, the petitioner seeks for directing the respondent-defendant to give his specimen handwriting and specimen signatures and also to produce his son Kapil Mahawar to give his specimen handwriting and signatures for comparison, which this Court finds contrary to law.

In view of above, this Court does not find any illegality in the well reasoned order dated 09.02.2017 (Annexure P-5) passed by the Civil Judge (Junior Division), Ambala and, accordingly, dismiss the civil revision.

(HARI PAL VERMA)
JUDGE

23.02.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No