

In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 2209 of 2016

Date of Decision: 21.8.2017

Gurdeep Singh and another

---Petitioners

vs.

Bhupinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. V.M.Gupta, Advocate
for the petitioners

Mr. Gurcharan Dass, Advocate
for respondent No. 1

Rekha Mittal, J.

The present petition directs challenge against order dated 9.2.2016 passed by the Civil Judge (Junior Division), Ludhiana whereby application filed by the petitioners for allowing the finger prints and handwriting expert Dr. Jassi Anand to take photographs of disputed and admitted signatures of Bhupinder Singh and allow the applicants to examine the expert in rebuttal evidence has been dismissed.

Counsel for the petitioners has submitted that the petitioners have filed a suit for specific performance of agreement to sell dated 10.4.2003 pertaining to a shop situated in Miller Ganj, Ludhiana, detailed in head note of the plaint and in the alternative for recovery of

Rs. 13,20,000/-.

The trial court framed issues on 15.8.2004. The petitioners adduced some evidence but their evidence was closed by court order. The petitioners approached this Court by filing CR No. 7324 of 2013 and the same was allowed permitting the petitioners/plaintiffs to adduce further evidence. Later, the petitioners adduced evidence but due to bona fide mistake, evidence was closed on 6.5.2014. It is further argued that the agreement dated 10.4.2003 and another agreement is the subject matter of suit instituted by respondent-Bhupinder Singh in which the petitioners have been arrayed as defendants. The said suit is pending in the same court which is seized of the present suit. In the said case, the petitioners have already examined finger prints and handwriting expert Dr. Jassi Anand, therefore, in case the petitioners are permitted to examine the expert witness, it would not introduce anything new of which respondent-Bhupinder Singh is not aware of. It is argued with vehemence that mere fact that the petitioners did not reserve their right to lead evidence in rebuttal while closing evidence on 6.5.2014 should not stand in their way to examine the expert witness in rebuttal whose testimony would facilitate just decision of the case. In support of his contention, he has referred to judgments of this Court **Kewal Singh vs. Jagjit Singh 2007(4) R.C.R. (Civil) 631**, **Premjit Kalia vs. Santokh Singh and others 2011(10) R.C.R. (Civil) 217** and **Jaswant Singh vs. Jagjit Singh 2016(3) PLR 15**.

Counsel representing the contesting respondent would urge that the petitioners knowing fully well respective pleadings of the parties and the fact that the respondent has denied execution of agreement to sell dated

10.4.2003, closed their evidence by making a statement dated 6.5.2014. It is further argued that as the petitioners did not reserve their right to lead any evidence in rebuttal, they have rightly been denied examination of so called expert in rebuttal evidence. In addition, it is argued that perusal of the issues framed by the trial court would indicate that no such issue has been framed by the Court if the agreement propounded by the petitioners is the result of forgery or fabrication, therefore, there is no question of permitting the petitioners to rebut any evidence adduced by the respondent in regard to an issue of which the onus has been cast upon the petitioners/plaintiffs. In support of his contention, he has referred to Division Bench judgments of this Court **Surjit Singh and others vs. Jagtar Singh and others 2007(1) R.C.R.(Civil) 537, Avtar Singh and another vs. Baldev Singh and others 2015(5) R.C.R.(Civil) 625.**

Another submission made by counsel is that the petitioners are guilty of mis-stating a material fact that they have closed evidence in affirmative which is contrary to record.

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

The petitioners instituted the suit as back as in the year 2003 seeking specific performance of agreement to sell dated 10.4.2003. The issues in the case were framed in the year 2004, reproduced in para 3 of the petition, quoted thus:-

1. Whether the plaintiff is entitled to specific performance, possession for injunction?OPP
2. Whether the plaintiff has not come to the Court with clean

hands?OPD

3. Relief.

Evidence of the petitioners was closed by order of the court and the petitioners approached this Court by filing CR No. 7324 of 2013 decided on 2.12.2013 whereby the petitioners were provided with opportunity to give evidence and liberty to produce the document which has been summoned from the police. The petition was disposed of without notice to the respondents for expeditious disposal of the suit. The petitioners availed of opportunity to adduce evidence in terms of order passed by this court and eventually they closed their evidence on 6.5.2014. Thereafter, the respondent/defendant adduced evidence and at this stage application for examining an expert witness in rebuttal has been filed.

Counsel for the petitioners is not in a position to assert that the petitioners closed their evidence in affirmative much less by reserving their right to lead evidence in rebuttal at any point of time before the respondent/defendant started leading evidence. As a matter of fact, the petitioners never reserved their right to lead evidence in rebuttal despite knowing fully well that Bhupinder Singh respondent No. 1/defendant has categorically denied execution of agreement to sell with the averment that agreement is the result of fraud and fabrication in connivance with defendant Nos. 2 and 3, being their close relatives. When case of the petitioners is examined in the ratio laid down by Division Benches of this Court referred to by counsel for respondent No. 1, the petitioners cannot be allowed to lead evidence to rebut the evidence adduced by the contesting defendant/respondent.

As has been noticed hereinbefore, counsel for the petitioners has referred to judgments of Single Benches of this Court. In **Kewal Singh's case (supra)**, the application of the plaintiff for examination of an expert witness was allowed by the trial court. The learned Single Judge did not dispute proposition of law laid down in **Surjit Singh and others' case (supra)** and **Jagdev Singh and others vs. Darshan Singh and others, 1998 (2) PLR 484** but still dismissed the revision petition preferred by the defendant with certain observations recorded in para 4 of the judgment but the court has not laid down any ratio while interpreting the provisions of Order 18 of the Code of Civil Procedure. In the circumstances, the judgment in **Kewal Singh's case (supra)** cannot be used as a precedent.

In **Premjit Kalia's case (supra)**, issue No. 9 “Whether the suit is barred under Section 53-A of the Transfer of Property Act?OPD” was involved and the onus of the said issue was upon the defendant. The plaintiff wanted to examine handwriting and finger prints expert to compare the signatures of Gurdial Singh, a witness on disputed agreement to sell dated 2.6.1983 with specimen signatures on a registered Will in favour of his son. This court, in view of the peculiar facts and circumstances of the case, allowed plea of the plaintiff to lead evidence on an issue onus of which is on the other party.

Similarly, in **Jaswant Singh's case (supra)**, the Court had framed an issue relating to forged character of the document and in those circumstances, the plaintiff was held entitled to bring rebuttal evidence. As in the case at hand, no issue has been framed by the trial court qua the agreement in question of which onus has been placed upon the

defendant/respondent No. 1, the petitioners cannot derive any advantage to their contentions from the referred authorities.

Counsel for respondent No. 1 has pointed out that the petitioners are guilty of mis-stating that they closed evidence in affirmative but the records speak otherwise. Counsel for the petitioners is not in a position to explain this mis-statement of fact in the grounds of revision. As per the settled position in law, a party who approaches the court with unclean hands is not entitled to any relief in equity or in exercise of discretionary jurisdiction.

Analyzed from any angle, the petitioners are not entitled to indulgence of this Court in their endeavour to lead evidence in rebuttal by setting aside the well considered order passed by the trial court.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

21.8.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No