

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

CR No. 2101 of 2017

Date of Decision: 11.10.2017

BHOLA SINGH

-PETITIONER

VS

ASHOK KUMAR AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Arun Bansal, Advocate, for
Mr. Sandeep Bansal, Advocate,
for the petitioner.

Mr. Kartik Gupta, Advocate,
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioner has assailed the order dated 07.12.2016 passed by Civil Judge (Junior Division), Hoshiarpur whereby the application for comparison of the signature appearing at the back of the cheque with specimen signature of the plaintiff was declined.

[2]. A suit for specific performance was filed on the basis of agreement to sell dated 13.04.2006 by the plaintiff. The defendants took the stand that the earnest money had already been returned along with interest by means of a cheque bearing No.212771 dated 08.08.2006 in the name of Ashok Kumar-plaintiff. Thereafter, evidence of the plaintiff was closed.

Defendants also closed their evidence in the year 2013.

[3]. During pendency of the suit, the defendants executed sale deed in favour of respondents No.2 to 4. Plaintiff sought amendment of the plaint under Order 6 Rule 17 CPC and the same was allowed. Subsequently, vendees were ordered to be impleaded as party defendants in the suit. Thereafter, plaintiff led evidence in the form of one witness and the evidence was closed on 19.02.2016.

[4]. Defendants also examined one Bank official namely Ankush, Deputy Manager of HDFC Bank as one of the defendants witness.

[5]. Original issues were framed vide order dated 16.09.2009. After the amendment, the issues were recast and additional issues were framed vide order dated 05.01.2015. The additional issue No.6 was to the following effect:-

“Whether the defendant has returned the amount of Rs.2,80,000/- to the plaintiff towards principle amount of Rs.2,50,000/-? OPD.”

[6]. Evidently, the examination of DW Bank Official was in the context of issue No.6. Evidence of the defendants in the aforesaid context is still pending. The plaintiff in his original stand has also denied the factum of signing at the back of cheque No.212771 dated 08.08.2006.

[7]. The entire controversy hinges upon factum of

withdrawal of the amount in the aforesaid cheque which was issued in the name of the plaintiff.

[8]. Even though nomenclature of the application has not come forth on record but the evidence of the defendants is pending after amendment of the plaint and examination of one of the PW and the Bank Official in the defendants evidence.

[9]. The Court becomes functuous officio only after pronouncement of the judgment.

[10]. In view of attending facts and circumstances of the case, this Court feels that even though the evidence of the defendants was closed in affirmative and no evidence was led by the plaintiff in rebuttal nor the defendants led any evidence thereafter but with the acceptance of the application for amendment of the plaint thereby impleading subsequent vendees and leading of evidence by both the parties thereafter, I feel inclined to take recourse to Order 18 Rule 17 CPC which is an enabling provision for convenience of the Court, when the Court requires any evidence for effective adjudication of the case, the same can be allowed at any stage of litigation.

[11]. Since, the signature appearing on the cheque is the core question which would enable the Court to decide the controversy once for all. In case signature of the plaintiff at the back of the cheque is proved by means of handwriting expert, the Court would certainly take into consideration the said

incriminating material to decide the controversy in accordance with law. If the opinion of the expert comes otherwise, thereafter the Court shall proceed to decide the suit on the basis of available material on record. In any case, the aforesaid prayer is required to be allowed in order to bring out the truth on record.

[12]. By exercising the powers under Order 18 Rule 17 CPC, I accept this revision petition as the plaintiff can be asked to give specimen signature for necessary comparison by the expert. The view already expressed by different Courts on the proposition can be relied. In **Guru Nanak Construction Company vs M/s Jaya Bharat Rolling Mill, 1976 PLR 648, Kirpal Singh and another vs Vipin Kumar, 2008(1) RCR (C) 669** and **Aarti Chhabra vs R.K. Arora, 2015(3) RCR (C) 625**, it was opined by the Court that in the event of denial of signature at the back, the plaintiff can be asked to give his specimen signature for necessary comparison. Such a course would enable the Court to decide the controversy in an effective and just manner.

[13]. In view of above, I accept this revision petition, set aside the impugned order. Normal consequences to follow.

11.10.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

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