

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

CR No.2672 of 2017.

Date of Decision: 19.04.2017.

Sandeep Sharma

....Petitioner.

VERSUS

Chandigarh Sports Council

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. P.K. Kukreja, Advocate for the petitioner.

SNEH PRASHAR, J.

Aggrieved by the order dated 15.03.2017 passed by learned Additional Civil Judge (Senior Division), Chandigarh (Annexure-P1) by virtue of which the application filed by the respondent-plaintiff seeking permission to examine a handwriting expert was allowed, the petitioner-defendant has filed the instant petition.

The submissions made Mr. P.K. Kukreja, learned counsel representing the petitioner have been considered.

A suit for recovery of Rs.10,95,989/- alongwith interest had been filed by the respondent-plaintiff alleging that the petitioner-defendant while working as cashier with the plaintiff had committed various acts of omission and commission in the accounts relating to which recovery of the aforesaid amount was pending against him on the date he was dismissed from service. The allegation included that during the period April, 2003 to

2005, the petitioner had received requisite cheques of amount of deduction under the Employees' Provident Fund (for short, 'EPF') which were got signed from the competent authority and were to be deposited with the EPF organization, but he did not do so and subsequently the cheque amount had to be deposited towards EPF alongwith interest and penalty. It is also the allegation that the petitioner had received huge amounts from different organizations/ persons against which official receipts were issued but the amount was not accounted for in the books of the plaintiff council and was embezzled by the petitioner.

Learned counsel for the petitioner argues that from the very initial stage i.e. in the written statement filed, the petitioner had categorically denied having received any amount either towards EPF or from any organization/ person for recovery of which the plaintiff has filed the suit. The onus to prove its entitlement to recover the amount was squarely on the plaintiff who led its evidence and thereafter the petitioner also led his evidence to prove the defence set up by him. It is at the stage of rebuttal evidence that the plaintiff, by way of impugned order, has been allowed to examine a handwriting expert. If at all, a handwriting expert was required to be examined for proving any document, the plaintiff should have examined him in his affirmative evidence. To support his argument that no evidence can be led in rebuttal on the issue, the onus of proof of which was on the plaintiff, learned counsel relies upon **Gurjeet Kaur vs. Mani Singh and another, 2014(56) R.C.R. (Civil) 151** and **Pardeep Singh vs. Piara Dass, 2014(24) R.C.R. (Civil) 422.**

The facts in hand are distinguishable from the facts of **Gurjeet**

where the plaintiff had sought to examine the handwriting expert by way of rebuttal evidence. Rather in the case in hand, the application seeking permission to examine handwriting expert was filed by the plaintiff after the petitioner had led his evidence but it was not the request of the plaintiff to allow him to examine the handwriting expert by way of rebuttal evidence. A perusal of the application (Annexure-P2) filed by the plaintiff indicates that permission had been sought to examine the handwriting expert by way of additional evidence though the said words were not specifically added in the application.

As held by Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, A.I.R. 2005 Supreme Court 3353**, to do substantial justice the Court has inherent power to allow any material evidence to be led by the parties by way of additional evidence unless the application filed prima facie suffers from malafide and amounts to abuse of process of the Court. But if the evidence sought to be produced by way of additional evidence is found to be not relevant and is such which could have been produced by the applicant at the appropriate stage exercising due diligence, the prayer made for leading additional evidence has to be declined.

The plaintiff filed an application seeking permission of the Court to examine the handwriting expert on the ground that in the written statement filed by the petitioner though the factum of embezzlement and misappropriation of the amount, sought to be claimed, was denied by him, there was no specific denial of his handwriting and signatures etc. on the cheques, receipts and other documents referred to by the plaintiff in its pleading. The relevant documents, on which the plaintiff relied upon in

support of its entitlement to claim recovery of the suit amount alongwith interest from the petitioner, were produced in its affirmative evidence. When the petitioner stepped into the witness box, the relevant documents were put to him, but he refused to admit or deny his handwriting/ signatures on those documents on the pretext that it was more than 14-15 years old record and therefore, he was not in a position to say whether the documents bear his handwriting/ signatures or not. It is in the said circumstances that the plaintiff filed an application seeking permission of the Court to examine a handwriting expert. Since the petitioner evaded the question of admitting/ denying his handwriting/ signatures on the documents, there appears no illegality or perversity in the order of learned trial court allowing the plaintiff to examine the handwriting expert.

Thus, there being no merit in the petition, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

19.04.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**