

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

CR No.3190 of 2015

Date of Decision: 28.04.2017.

Mani Ram and another

....Petitioners.

VERSUS

Maya Ram (now deceased) through L.Rs. Kranti Devi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sumit Sangwan, Advocate for the petitioners.

Mr. Amit Arora, Advocate for respondents No.1(c), 2 and 3.

SNEH PRASHAR, J.

Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 23.04.2015 vide which the application filed by the petitioners for comparison of signatures of Krishan Kumar (respondent No.1-C) on the document dated 29.04.1994 (Ex.P3) was dismissed by learned trial Court.

The submissions made by Mr. Sumit Sangwan, learned counsel representing the petitioners and Mr. Amit Arora, learned counsel representing respondents No.1(c), 2 and 3 have been heard.

Learned counsel for the petitioners argued that the petitioners have filed a suit for possession of a three storied shop on the basis of an agreement dated 12.05.1993 and the extended agreement dated 29.04.1994

executed by Maya Ram, father of Krishan Kumar (impleaded as defendant No.1 who died during pendency of the suit). In his written statement, Maya Ram denied his signatures on the agreement to sell and the subsequent agreement. The petitioners during their evidence in affirmative examined a handwriting and finger print expert for proving signatures of Maya Ram. During pendency of the suit, Maya Ram expired and his legal representatives were brought on record. Krishan Kumar son of Maya Ram, was also a signatory to the agreement dated 29.04.1994 which was executed for extension of time. Earlier Krishan Kumar was not a party to the suit. After he was impleaded as legal representative of deceased Maya Ram, he stepped into the witness box during evidence and in his cross examination when the extended agreement (Ex.P3) was put to him, he denied his signatures on the same whereas he admitted his signatures on the written statement filed by him in the suit in which he and his father suffered a decree and transferred the suit property in favour of his wife Sunita (defendant No.3). Learned counsel urged that Krishan Kumar denied his signatures on the extended agreement, the petitioners moved an application seeking permission to examine handwriting and finger print expert to get his signatures compared with the admitted/ standard signatures, but learned trial Court erroneously dismissed the application.

Learned counsel further asserted that the extended agreement dated 29.04.1994 (Ex.P3) is a material piece of evidence on which the rights of the petitioner are based. In order to prove the agreement in due process of law and since respondent Krishan Kumar has denied his signatures on the same, it has become necessary to get the disputed signatures compared with

On the other hand, learned counsel for the respondents argued that if at all, it was necessary to prove the signatures of Krishan Kumar on the extended agreement, the petitioners should have led the required evidence while adducing evidence in affirmative as the onus to prove the said document was on the petitioners. The contention of the petitioners that earlier authentic signatures of Krishan Kumar were not available on file, was patently wrong as Krishan Kumar was impleaded as legal representative of Maya Ram in the year 2011 on an application filed by him immediately after the death of Maya Ram. The said signatures were very much available on the file and the petitioners could have got the disputed signatures of Krishan Kumar compared with the said signatures in their evidence.

There appears no force in the arguments of learned counsel for the petitioners. Procedural laws are handmaid of justice and are not its mistress. They are meant to advance its call and not to obstruct the same. In **State of Punjab v. Shamlal Murari, AIR 1976 Supreme Court 1177** it was held that “we must always remember that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, the 'procedural, will thwart fair' hearing of prejudice doing of parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities”.

The Hon'ble Supreme Court also held in **Salem Advocate Bar**

3353, that 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.

Reverting to the instant case, admittedly earlier Krishan Kumar was not a party to the suit. His father defendant Maya Ram in his written statement had denied his signatures on the agreement as well as extended agreement and as submitted by learned counsel for the petitioners required evidence to prove his signatures was led by them. It is only after the death of Maya Ram that Krishan Kumar was impleaded in place of deceased Maya Ram and during his evidence he stepped into the witness box. The extended agreement dated 29.04.1994 (Ex.P3) which was alleged to be signed by him, was put to him during cross examination, but he denied his signatures on the same. Consequent to his denial, his signatures on the extended agreement became disputed and accordingly the petitioners moved an application for comparison of the said disputed signatures with his standard/admitted signatures. The application was filed by the petitioners after recording of the statement of Krishan Kumar without much loss of time as the statement of Krishan Kumar was recorded on 05.02.2015 and the application was filed on 25.02.2015. The application prima facie suffers from no malafide. In the said set of facts, the order of learned trial Court dismissing the application for additional evidence filed by the petitioners is illegal and perverse.

Resultantly, the impugned order is set aside and the instant petition is allowed. Learned trial Court shall accord one effective opportunity to the petitioners to examine a handwriting and finger print expert for comparison of the disputed signatures with standard/admitted signatures of Krishan Kumar, subject to payment of Rs.5000/- as costs which shall be deposited with the Legal Aid Authority, Bhiwani.

(SNEH PRASHAR)
JUDGE

28.04.2017.
jitender sharma

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

Whether Reportable : **Yes/ No**