

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.7016 of 2016

Date of decision:4.8.2017

Nirmal Kanta

...Petitioner

Versus

M/s Mohan Lal & brothers and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vaibhav Sehgal, Advocate for the petitioner.
None for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 1.9.2016 (Annexure P-1) passed by the learned trial court, whereby an application moved by the plaintiff, directing defendant No.2 Mohan Lal to give his specimen signatures as well as handwriting, so as to enable the expert to compare the same with his signatures and handwriting appearing on the disputed documents, was dismissed, plaintiff has approached this Court by way of present revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Service was complete on 18.1.2017. But when nobody appeared on behalf of the respondents, case was adjourned to 9.5.2017.

Again none appeared on 9.5.2017 on behalf of the respondents and case was

adjourned for today i.e. 4.8.2017, granting one more opportunity.

Similar is the position today. Neither anybody has come present on behalf of the respondents to oppose the instant revision petition nor any request for pass over has been made.

Heard learned counsel for the petitioner.

A bare perusal of the impugned order, particularly the operative part thereof at pages 14 and 15 of the paper-book, would show that the learned trial court exceeded its jurisdiction, while passing the impugned order. It is so said because it would be the exclusive domain of the Fingerprint and Handwriting Expert to compare the signatures of defendant No.2-Mohan Lal with his disputed signatures and the expert report would be furnished before the court, accordingly. Thereafter, evidentiary value of the expert evidence could have been examined, considered and appreciated by the learned trial court.

However, the learned trial court did not allow the application of the plaintiff for comparison of signatures of defendant No.2-Mohan Lal, observing that no useful purpose would be served. Having said that, this Court feels no hesitation to conclude that the learned trial court proceeded on a misconceived approach, while passing the impugned order, which suffers from a serious error of law and the same cannot be sustained.

The learned trial court could not have assumed the duty of Fingerprint and Handwriting Expert, as sought to have been done in the instant case. The learned trial court ought to have directed defendant No.2-Mohan Lal to give his specimen signatures so as to enable the petitioner-plaintiff to get the same compared with his disputed signatures on the

documents in question. Such exercise would have certainly facilitated the learned trial court to arrive at a judicious conclusion so as to do substantial justice between the parties. However, since the learned trial court failed to appreciate the above-said material aspect of the matter, while passing the impugned order, it cannot be sustained, for this reason also.

The view that has been taken by this Court also finds support from the following judgments in **Guru Nanak Construction Company Vs. M/s Jai Bharat Steel Rolling Mills, 1976 RLR 648 (P&H); Sheo Narain and another Vs. Rawat, 1985 (1) PLR 47 (P&H); Abdul Sattar Vs. Bashir, 2006(2) RCR (Civil) 535 (P&H); Kirpal Singh and another Vs. Vipin Kumar, 2008(1) CR (Civil) 669 (P&H); Chamkaur Singh Vs. Mithu Singh, 2014 (1) CivCC 389 (P&H); R.P.Chhabra Vs. R.K.Arora, 2015 (3) RCR (Civil) 625 (P&H); Mr.Budumuru Vijayanandh Vs Smt.Potnuru Bhagyalakshmi, 2005 AIR (A.P.) 35 and Banda Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu (died) per L.Rs and others, 2016(2) CCC 599 (Hyderabad) (FB).**

Despite having been granted sufficient opportunities, nobody has turned up on behalf of the respondents to oppose the present revision petition. The impugned order has been found suffering from patent illegality.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order is an order without jurisdiction and also suffers from patent illegality, it cannot be sustained.

Accordingly, the impugned order dated 1.9.2016 (Annexure P-1) passed by the learned trial court is hereby set aside. Application of the petitioner-plaintiff (Annexure P-5) dated 17.5.2016 would stand allowed. The learned trial court is directed to proceed further with the matter so as to decide the suit at an early date.

Resultantly, with the above-said observations made and directions issued, the instant revision petition stands allowed, however, with no order as to costs.

4.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No