

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

C.R.No.7622 of 2016 (O&M)

Date of Decision:- 31.01.2017

Jeet Ram Sharma

...Petitioner

vs.

M/s Vikram Electric Equipment (Pvt.) Limited

...Respondent

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Kunal Dawar, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.

Petitioner-Jeet Ram Sharma has approached this Court by way of filing present revision petition under Article 227 of the Constitution of India for setting aside order dated 2.11.2016 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Gurgaon whereby application filed by the petitioner for sending the documents as mentioned in the application for comparison to Forensic Science Laboratory, Madhuban, has been dismissed.

Plaintiff-respondent filed a suit for recovery of ₹ 1,48,12,533/- along with interest. Written statement to the suit was filed by defendant-petitioner and thereafter, issues were framed. Petitioner-defendant after examination of PW-1, an official of the company, who tendered certain documents, filed an application dated 29.2.2016 for sending the documents

i.e. Disputed Agreement (Exhibit P-6), Disputed Power of Attorney (Exhibit P-6A) along with original documents i.e. Cheque in favour of petitioner-defendant issued by Sh. Shivraj Singh Dabra along with original specimen signature card and account opening form of Sh. Shivraj Singh Dabra bearing his signatures to FSL, Madhuban. Said application was dismissed vide order dated 2.11.2016 which has been challenged in the present revision petition. The present revision petition came up for hearing on 20.12.2016 and following order was passed:-

“The petitioner-defendant is aggrieved of the impugned order dated 02.11.2016, whereby in suit seeking recovery of the amount, an application at the instance of the petitioner-defendant for sending the collaboration agreement dated 08.04.2005 and GPA dated 20.09.2005 of Shiv Raj Dabra in favour of Dharampal to FSL, Madhuban for comparison, has been dismissed.

This Court while hearing the revision petition, called upon Mr. Kunal Dawar, assisting counsel to Mr. Ashish Aggarwal, Sr. Counsel to apprise the Court about the stage of the suit, answer was that it is listed for plaintiff's evidence. I am afraid, application aforementioned should not have been filed at this stage, and seeks opportunity that it should have been kept pending and to be filed at relevant point of time i.e. when defendant's evidence begins. It would tantamounts to proving the case of the plaintiff who may not even think of doing the same. However, during the course of hearing, Mr. Kunal Dawar, Advocate has brought to the notice of this Court to the findings arrived at by the trial Court while dismissing the application. Same reads

thus:-

“3. After having heard the contentions of both the counsels for the parties on the application, this Court is of the view that the application is devoid of merit as both the parties are supposed to lead evidence in support of their pleadings including the Expert. Therefore, the applicant is also at liberty to examine the Expert, if he so desires. As such, there is no need to send the documents to FSL, Madhuban.

4. Learned counsel for the applicant/defendant has vehemently argued that there are chances of winning over the private Expert by the party, therefore, the documents be sent to Govt. Agency for examination. But this Court is not convinced of this argument because reports of both the Experts whether Freelance Expert or Govt. Expert carries the same strength. Accordingly, the application stands dismissed.

5. The case is adjourned to 15.11.2016 for cross-examination of PW1 and for remaining evidence of plaintiff, to be brought at own responsibility.”

He submits that such findings are totally alien and opposite to the judgment rendered by this Court in Chamkaur Singh Vs. Mithu Singh, 2014 (1) RCR (Civil) 303, whereby general direction has been issued to the Punjab for the dispensation of the justice for ascertaining the veracity and authenticity of the documents. At this stage, Mr. Kunal Dawar, Advocate on

instruction from his client submits that he may given permission to withdraw the application with liberty to file at the stage when the defendant's evidence begins. Liberty aforementioned is granted.

He further submits that findings arrived at by the Courts below may not come in his way, much less, treated as doctrine akin to res judicata.

I am of the view that reasoning assigned by the trial Court is not called for as it is the case of the parties to prove by leading direct and cogent evidence and cannot pre-empt or put fatters on the rights of the parties in the manner and mode indicated particularly the findings rendered in para No.4. The aforementioned findings, in my view, would not also come in the way of the petitioner. However, explanation or so called reasoning given is not backed by any reasons or any case law. I accordingly, call upon the comments of the concerned Officer regarding aforementioned order.

Let the comments of concerned Officer through District and Sessions Judge, Gurgaon, be called for.

For awaiting the report, adjourned to 31.01.2017.

Once parties are at variance regarding the denial and admission of the documents, case is always built during the evidence stage and if such right is curtailed and taken away, then consequential effect would seriously prejudice either of the side.”

Vide aforesaid order, the comments of the concerned officer through District & Sessions Judge, Gurgaon were called. In pursuance of said directions, comments were sent to this Court. It has been stated by the Presiding Officer that two cases were pending before him and same application was moved in both the cases which were dismissed with the

same observations while relying upon judgment rendered in **Surinder Kaur vs. Badal Singh and others, 2013(3) CCC 144,** which was dismissed by this Court by making some observations. It is also mentioned that the impugned order was passed by reproducing the order of High Court while dismissing the revision petition.

On perusal of findings recorded by the trial Court, the judgment of this Court passed in **Chamkaur Singh vs. Mithu Singh, 2014 (1) RCR Civil 303** has been relied upon, whereas, in that case the general directions were issued to State of Punjab for dispensation of justice for ascertaining the veracity and authenticity of the documents. The reasoning given by the trial Court was not required to be given as it is a matter of evidence and the same can be seen at the time of recording evidence and nothing can be said at this stage as it may affect the merits of the case. **The comments are not only unwarranted but premature also as there is no evidence on record. Even in the comments sent by the concerned judicial officer, it has not been made clear as to how the observations have been made whereas these observations were not required to be given.** After passing of detailed order by this Court on 20.12.2016, the application moved by the petitioner has also been withdrawn. The judgment passed in case titled as **Murari Lal vs. State of Madhya Pradesh and others, 1980 (1) SCC 704** is applicable in the present case. The relevant portion of the same is reproduced as under:-

“The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force.

Section 73 of the Evidence Act expressly enables the court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusions. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence."

The decision in Murari Lal (supra) was followed in Lalit Popli v. Canara Bank & Ors. 2003 (3) SCC 583, relevant portion of which reads as follows:-

"15. While there is no doubt that court can compare the disputed handwriting/signature/finger impression with the admitted handwriting/ signature/finger impression, such comparison by court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison,

only after an analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the court is in a position to identify the characteristics of finger prints, the court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the court should not hazard a guess by a casual perusal. The decision in Muralilal (supra) and Lalit Popli (supra) should not be construed as laying a proposition that the court is bound to compare the disputed and admitted finger impressions and record a finding thereon, irrespective of the condition of the disputed finger impression. When there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further even in cases where the court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the

characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The court should avoid reaching conclusions based on a mere casual or routine glance or perusal.”

In view of facts and circumstances as mentioned above, nothing survives in the present petition. Learned counsel for the petitioner also prays for withdrawal of the same.

The petition is dismissed as withdrawn.

However, the observations made above regarding expression of any opinion before having any evidence are not warranted and as such the concerned judicial officer is directed to be careful in future.

January 31, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes