

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

-.-

CR 8885 of 2017 (O&M)  
Date of decision: 19.12.2017

*Bijender Singh*

*..... Petitioner*

*Versus*

*Hari Lal and others*

*.....Respondents*

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

-.-

Present: Mr. J S Hooda, Advocate  
for the petitioner

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**Rekha Mittal, J.** (Oral)

Challenge in the present petition has been directed against order dated 06.12.2017 passed by the Civil Judge (Senior Division) Palwal whereby application for adducing additional evidence has been dismissed.

Counsel for the petitioner/plaintiff would submit that the petitioner has filed suit for specific performance of agreement to sell dated 01.01.2009 and the same is a registered document. The time for execution of sale deed was extended vide memos dated 01.04.2010 and 21.02.2011 executed by Hari Lal - defendant No. 1. Respondent/defendant No. 1 has admitted execution of the agreement dated 01.01.2009 but disputed execution of extension memos aforesaid. It is argued with vehemence that in case the petitioner is not allowed to examine the handwriting expert to prove signatures of respondent No. 1 on the memos extending time for execution of the sale deed, it may be of serious consequence for the petitioner. Another submission made by counsel is that examination of the

handwriting expert would facilitate effective adjudication of the matter in controversy, therefore, order impugned may be set aside by providing an opportunity to the petitioner to examine the handwriting expert. In addition, it is argued that no prejudice shall be caused to the respondents in case the petitioner is permitted to adduce additional evidence as they will get opportunity to cross examine the handwriting expert and lead evidence to rebut additional evidence. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court ***K. Venkataramiah vs. A Seetharama Reddy and others, AIR 1963 SC 1526*** and ***Shyam Gopal Bindal and others vs Land Acquisition Officer and another, AIR 2010 SC 690***.

I have heard counsel for the petitioner and perused the paper book particularly the order impugned but find that the petition is devoid of merit and liable to be dismissed.

The trial Court in para 3 of the impugned order has given details of number of opportunities provided to the petitioner to adduce evidence when the case was pending for evidence of the petitioner/plaintiff. The first opportunity was allowed on 19.11.2015 and eventually the evidence was closed by the plaintiff himself on 13.01.2017. The petitioner knew it from inception of the proceedings or for that matter from stage of filing of written statement by the defendants that defendant No. 1 has controverted allegations of the plaintiff that defendant No. 1 extended time for execution of the sale deed vide memos dated 01.04.2010 and 21.02.2011, relied upon by the plaintiff. There is no explanation why the petitioner could not examine handwriting expert at appropriate stage of the proceedings despite exercise of due diligence. Counsel for the petitioner

would inform that the defendants have not examined handwriting expert to substantiate their plea that the memos were not signed by defendant No. 1.

Before amendment of the Code of Civil Procedure (in short, 'CPC') with effect from July 2002, there was a specific provision giving right to the parties to adduce additional evidence. Order 18 Rule 17-A CPC was deleted by the Legislature in its wisdom to avoid delay in decision of cases. This Court is not oblivious of the fact that despite Order 18 Rule 17-A CPC has been abrogated, right of a party to adduce additional evidence is not completely scuttled. The Court in exercise of inherent power under Section 151 CPC can allow additional evidence in deserving cases. The power under Section 151 CPC is quite wide. As per the settled position in law, "*wider the power, more is the caution*", to be used for exercise of that power in order to avoid its misuse. The inherent power is to be used sparingly and not in a routine manner.

In view of the discussion made herein-before, the petitioner has failed to make out a case for indulgence in exercise of discretionary jurisdiction. That being so, I find myself unable to accept plea of the petitioner that the Court below has committed an error much less illegality by rejecting application for adducing additional evidence by examining handwriting expert.

Counsel for the petitioner has relied upon judgments of Hon'ble the Supreme Court of India in ***K. Venkataramiah's*** case (supra) and ***Shyam Gopal Bindal's*** case (supra). Both the judgments have been rendered under Order 41 Rule 27 CPC. There cannot be any dispute about the settled position in law that additional evidence can be allowed even at the appellate stage if the case falls within the purview and ambit of any of the Clauses of

Rule 27 Order 41 CPC. Under Clause (b) thereof, the Court has the power to allow additional evidence to enable it to pronounce a judgment and also for any other substantial cause. The petitioner cannot derive any advantage to his contention from the referred authorities because he has sought to adduce additional evidence before the trial Court. This apart, it is difficult to accept contention of the petitioner that evidence of the handwriting expert is necessary to enable the Court to pronounce the judgment or for any other substantial cause. I would hasten to add that evidence of handwriting expert is of fragile nature. Science of comparison of handwriting is not a prefect science. Ordinarily, the handwriting expert toes the line of litigant who has availed of his services. That being so, plea of the petitioner that examination of the expert would clinch the matter in controversy is misconceived and liable to be rejected.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)  
Judge

19.12.2017  
mohan bimbra

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