

CR-4962-2018

Date of Decision: 06.08.2018

Raj Kumar

.....Petitioner

Versus

Dharmender

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Mr. Manish Mehta, Advocate
for the petitioner.**DEEPAK SIBAL, J. (ORAL)**

Through the present petition challenge is made to the order dated 05.07.2018 passed by the Civil Judge (Senior Division), Narnaul (for short 'the Trial Court') through which an application filed by the respondent for seeking specimen signatures and handwriting of petitioner-Raj Kumar and PW-7-Jogender has been allowed.

Briefly stated the relevant facts which have emerged from the record as also after hearing the learned counsel for the petitioner are that the petitioner and the respondent entered into an agreement to sell dated 27.05.2013 in pursuance whereof the petitioner received from the respondent Rs.20 lakhs as earnest money. As per the respondent as a token of receipt of Rs.20 lakhs, the petitioner appended his signatures on the agreement to sell and such a transaction was witnessed by PW-7-Jogender who also not only appended his signatures on the agreement to sell but also made an endorsement on the same in that regard. However, in the proceedings before the Trial Court the petitioner denied the receipt of Rs.20 lakhs. The aforesaid Jogender while appearing before the Trial Court as PW-7 though admitted his signatures on the aforesaid agreement to sell, but he denied making any endorsement on the same. In the light of these

facts, the respondent filed an application before the Trial Court for obtaining specimen signatures of both PW-7-Jogender and the petitioner and then getting them compared with the endorsement and signatures on the agreement to sell. The respondent's application was allowed by the Trial Court through the order which is under challenge in the present proceedings.

Learned counsel for the petitioner submits that it is not for the Court to collect evidence for the respondent and by allowing the aforesaid application filed by the respondent, the Court has done just that. A judgment of the Andhra Pradesh High Court in ***Renu Devi Kedia versus Seetha Devi AIR 2005 AP 180*** has been cited in support of his contentions.

The above submission made by learned counsel for the petitioner have been considered and found to carry no weight.

The pivotal issue between the parties is whether the agreement to sell in question was entered into between them. The case set up by the respondent is that not only was the afore agreement to sell entered into between the parties, in pursuance thereof the petitioner had received from the respondent Rs.20 lakhs as earnest money. It is further the case of the respondent that the above transaction was not only witnessed by PW-7-Jogender, he also made an endorsement on the same in that regard and signed it. The petitioner/defendant and PW-7-Jodenger while appearing before the Trial Court denied the receipt of the earnest money and the making of the endorsement, respectively.

Resolution of the above disputes is crucial to the adjudication of the case. Through the order impugned in the present proceedings, only

with an attempt to decipher the truth, the Trial Court has directed the comparison of specimen signatures and handwritings of the petitioner and PW-7-Jogender with the disputed signatures and endorsement. Such directions are found to have been issued by the Court only with a view to arrive at a just decision. Clarity on the afore disputed facts would prejudice none, particularly when either party would have the liberty to rebut the contents of the report if the same is adverse to its rights.

The judgment of the Andhra Pradesh High Court in ***Renu Devi Kedia's case (supra)*** has no application to the facts of the present case as in that case there was a long gap between the disputed signatures and the specimen signatures and on that count, the Trial Court therein had dismissed the application for seeking opinion of the handwriting expert. Such order was upheld by the High Court.

In view of the above, no merit is found in the present petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

06.08.2018
Neha

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No