

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

CR No.564 of 2017

Date of decision:10.05.2018

Ramesh Rani

... Petitioner

Vs.

Vijay Kumar Mehta and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. B.D.Sharma, Advocate
for respondent No.1.

AMIT RAWAL J.

The present revision petition is directed against the order dated 03.01.2017 (Annexure P-7), whereby, the application filed by respondent for comparison of signatures of petitioner/defendant No.1 and examination of expert has been allowed at the stage of rebuttal of evidence.

Mr. Amit Dhawan, learned counsel appearing on behalf of the petitioner submitted that respondent No.1/plaintiff instituted the suit for specific performance of agreement to sell dated 22.11.1989 allegedly executed by respondent/defendant No.2 being registered Power of Attorney holder of petitioner/defendant no.1 regarding the suit property, with a consequential relief of permanent injunction restraining the defendants, their agents, representatives etc from alienating and creating third party

rights. The plaintiff in the aforementioned case concluded the evidence on 16.01.2015. The defendants in support of the pleadings examined witnesses and also handwriting expert namely Sukhjinder Singh. In the absence of rebuttal issue, the respondent-plaintiff could not be permitted to lead evidence in rebuttal which is against the provisions of Order 18 Rule 3 CPC and the judgment of Division Bench of this Court as no right had been reserved while closing the evidence in rebuttal. He has drawn the attention of this Court para 5 of the petition, whereby, issues framed in the suit have been extracted.

Mr. B.D.Sharma, learned counsel for respondent no.1 submitted that the petitioner had not come to the Court with clean hands as it has not been disclosed to the Court that after the defendants had taken the aid in discharge of the onus vis-a-vis examination of handwriting expert, an additional issue on 28.09.2016 was framed putting the liability upon the defendants as to whether defendant no.1 had actually executed the Special Power of Attorney dated 17.6.1988. In fact, the petitioner-defendant had already led the evidence in contemplation of the framing of additional issue, therefore, the plaintiff is required to lead evidence to rebut the aforementioned evidence. In the absence of specific issue, there was no occasion for the plaintiff to take the assistance of the expert.

I have heard the learned counsel for the parties and appraised the paper book.

It would be in the fitness of things to extract the issues already framed in the suit. The same read thus:-

- “i) Whether the plaintiff is entitled for permanent injunction as prayed for?OPP*
- ii) Whether the present suit is not maintainable?OPD*
- iii) Whether the plaintiff has got no locus standi to file the present suit? OPD*
- iv) Whether no cause of action accrued to the plaintiff to file the present suit? OPD*
- v) Whether the plaintiff has concealed the material facts from the Court?OPD*
- vi) Whether the site plan attached with the plaint is wrong and incorrect? OPD*
- vii) Whether the present suit is time barred?OPD*
- viii) Relief.”*

Framing of additional issue on 28.9.2016 will lay the onus upon the petitioner-defendant has not been controverted by Mr. Dhawan.

In view of such fact, I am of the view that application submitted by the respondent-plaintiff for examination of the signatures of defendant no.1 on the Special Power of Attorney particularly when defendants had denied to have executed a Special Power of Attorney, in view of framing of additional issue was essential and necessary, for, plaintiff did not take the aid of the expert as there was no such issue nor could envision that such issue could be framed. It is a subsequent event. The impugned order allowing the application of the respondent-plaintiff, thus, cannot be said to be suffering from any illegality or infirmity or without jurisdiction.

No ground is made out for interference in the impugned order.
Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

May 10, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No