

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

**Civil Revision No.7432 of 2016 (O&M)
Date of decision: 09.01.2018**

Ram Singh

.....Petitioner

Versus

M/s S.S. Enterprises Commission Agent

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.K. Bura, Advocate,
for the petitioner.

Mr. Vivek Goyal, Advocate,
for the respondent.

Ritu Bahri, J.

Challenge in this petition is to the order dated 25.10.2016 (Annexure P-3) passed by the Civil Judge (Junior Division), Kurukshetra, whereby application filed by plaintiff-respondent for examining an Handwriting Expert in rebuttal has been allowed.

M/s S.S. Enterprises-plaintiff (respondent herein) has filed a suit for recovery of Rs.6,41,819/-, including interest calculated upto 31.03.2011. It was pleaded in the plaint that on 26.04.2008, defendant-petitioner borrowed a sum of Rs.37,093.17/- in cash and settled his account with plaintiff-respondent on the same day and a sum of Rs.3,45,535/- was found outstanding against the defendant. Defendant-petitioner acknowledged this balance after understanding the complete account. Thereafter, he made an

endorsement in his own handwriting acknowledging the above said balance amount. On the same day i.e. 26.04.2008, he borrowed another sum of Rs.20,000/-. He again borrowed Rs.2320/- and Rs.385/- on 20.08.2008 and acknowledged the balance amount of Rs.3,95,089/-. The total amount, including interest, was sought to be recovered by way of the suit. Defendant-petitioner contested the suit and filed written statement, wherein he denied borrowing of the alleged amount from the plaintiff. After framing of issues, plaintiff-respondent concluded its evidence on 13.03.2014. However, plaintiff did not examine any handwriting expert. Thereafter, defendant-petitioner proceeded to lead his evidence and examined Shri Shamsher Singh Malik, Handwriting Expert, who in his affidavit, clearly mentioned that the wording 'Baki rahe Rs.3,93,204.00 P' was added later on above the signatures of Ram Singh in *Bahientry* Ex.P15 with different ink writing instrument. He further mentioned that the amount of second line i.e. Rs.3,94,704/- and wording 'pichla bakaya' and amount of fourth line i.e. Rs.3,95,089/- above the signature of Ram Singh in *Bahi* Entry Ex.P17, was added later on with different inked writing instrument. The defendant concluded his evidence on 09.08.2016 and the case was fixed for rebuttal evidence for 17.08.2016.

Plaintiff-respondent then made an application (Annexure P-1) for examining Handwriting Expert in rebuttal. Petitioner filed his reply (Annexure P-2) to the application. Vide impugned order dated 25.10.2016 (Annexure P-3) trial Court allowed the said application.

Learned counsel for the petitioner has referred to the judgment passed by this Court in **Belo Devi vs. Urmila Devi and others**, 2015 (1) Law Herald 510, wherein the plaintiff had challenged the validity of a gift deed,

which had not been executed by one Chandro Devi and was not thumb marked by her (plaintiff) as a witness. At the initial stage itself, she could produced Handwriting and Fingerprint Expert to prove that her thumb impression were not there on the gift deed. Defendants, thereafter, led their evidence and examined Fingerprint Expert and this would not give a right to the plaintiff to lead any evidence in rebuttal on issue No.2. It was held that onus to lead evidence on the issue with regard to validity of the gift deed was on the plaintiff and since plaintiff did not lead any evidence by examining an expert, at the stage of rebuttal under Order 18 Rule 3 CPC, she could not be allowed to examine an Handwriting and Fingerprints Expert.

Heard.

At this stage, reference can be made to a judgment passed by this Court in **Kulwant Singh vs. Chand Singh etc.,** 2015 (sup.) CivCC 128. It was a case where plaintiff had filed a suit for declaration to the effect that he was owner in possession and in control of the tube-well connection in dispute. As per the writing executed between the parties, defendant had no right in the said tube-well. During the course of evidence, plaintiff had brought the Handwriting and Fingerprint Expert to prove the signatures of the defendant on the questioned document. He also examined said expert in evidence. The contesting defendant raised an objection that the Handwriting and Fingerprint Expert could not be examined in rebuttal by the plaintiff, as this evidence was of affirmative nature and was to be produced by the plaintiff in affirmative only when other evidence was being produced by him. This Court has observed that onus to prove that the said document was forged or fabricated, was on the defendants. Once the defendants had led

their evidence, the plaintiff could not be denied an opportunity to examine Handwriting and Fingerprint Expert in rebuttal. With these observations, the revision was allowed granting permission to the plaintiff to examine the Handwriting and Fingerprint Expert. It was further observed that if, onus to prove issue No.3 was on the plaintiff, then he had to lead entire evidence in affirmative. Without reservation of his right to produce document in rebuttal, he would not have a right to lead evidence in rebuttal.

Having examined the impugned order, this Court is of the view that while allowing the application (Annexure P-1), trial Court has rightly relied upon the judgment passed by this Court in **Kulwant Singh's** case (supra). The scope of interference in the impugned order is limited, as no illegality, much less perversity has been found therein warranting interference by this Court.

Resultantly, the present petition is dismissed.

09.01.2018
ajp

(RITU BAHRI)
JUDGE

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