

(105) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7803 of 2017 (O&M)
Date of decision: 03.10.2018

Jagtar Singh

.... Petitioner

Versus

Jullunder Singh

.... Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. Viney Bajaj, Advocate for the petitioner.

B.S. Walia, J.

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 12.09.2017 (Annexure P-5) passed by the learned Civil Judge (Jr. Div.), Faridkot allowing the application for summoning Karamjit Singh, son of petitioner/defendant for the purpose of taking specimen of handwriting and signatures of petitioner/defendant Jagtar Singh as well as his son Karamjit Singh for comparison by the Finger and Handwriting Expert Shri Sanjeev Sharma. Challenge is also to order dated 30.10.2017 rejecting the plea in the application under Section 114 read with Order 47 Rule 1 and Section 151 CPC that Karamjit Singh not being a party to the suit, could not be called to give specimen signature and handwriting on the ground that only a party to the suit or any person present in Court could be asked to give his/her specimen signature and handwriting and not a third person not present in Court in view of Section 73 of the Indian Evidence Act, 1872.

[2] Learned Counsel for the petitioner has relied upon the decision of Hon'ble the Gujarat High Court in **Babubhai Mulchanddas Kapadia v. Ishwarlal Devchand Kabrawala, 1975 AIR (Gujarat) 95** in support of his plea for setting aside of the impugned order.

[3] I have considered the submission of learned counsel for the petitioner. However, before dealing with the same, I deem it appropriate to refer to the provisions of Order 16 Rule 14 CPC which are reproduced as under:-

“14. Court may of its own accord summon as witnesses strangers to suit.- Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit, and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.”

A perusal thereof reveals that subject to the provisions of the CPC as to attendance and appearance the Court where it thinks it necessary to examine any person including a party to the suit and not called as a witness by a party to the suit then the Court may of its own motion cause such person to be summoned as a witness to give evidence etc. on a day to be appointed and may examine him as a witness etc.

[3] Hon'ble Patna High Court in **Dinanath Shrivastava v. Sukhdeo Narayan Prasad and others, AIR 1980 Patna 253** while considering Section 73 of the Evidence Act, 1872 and Order 16 Rule 14

CPC held that the Court is empowered to call as a witness any person other

than the party to the suit and he may be so summoned to give evidence or to produce a document, therefore, the person so called can be asked by the Court to produce a document containing his signature and that in the circumstances, there was no reason to limit the expression “any person” in Section 73 of the Evidence Act to parties to the litigation and if the authenticity of a writing by a stranger is necessary to be decided in a case, such a person must come within the sweep of the Section 73 of the Evidence Act. Relevant extract of the aforementioned decision is reproduced as under:-

“The language is wide in terms and empowers the Court to give necessary direction to any person present in Court and there does not appear to be any reason to limit the expression “any person” to parties to the litigation. If the authenticity of a writing by a stranger is necessary to be decided in a case, such a person must come within the sweep of the Section. To interpret it otherwise would be to defeat the object of the Section. Even if the meaning of the provision be assumed to be ambiguous, the Court must construe it in a way which may advance the object of the Section and the interest of justice.”

In the aforementioned case also the petitioner therein was the son of defendant No.1 and had put his signatures on certain documents said to be memoranda of partition between the members of the family and defendant No.1 had denied the allegations made in the plaint and also the signatures alleged to be of the petitioner i.e. his son. In the said case, notice had been issued to the petitioner and on appearing he had taken up the plea that he was not a party to the suit. Court overruled the objection and directed him to give his specimen signatures.

[4] In the instant case, the position is the same inasmuch as the petitioner's son is not a party to the suit but is the attesting witness to the writing on the agreement to sell which records that the plaintiff/respondent had paid a sum of ₹ 15,00,000/- to the petitioner/defendant as earnest money and petitioner/defendant in paragraph No.3 of the written statement has denied having executed the agreement to sell as also of having received any earnest money.

[5] Accordingly, for the reasons as are recorded above, I am of the view that the provisions of Section 73 of the Evidence Act read with provisions of Order 16 Rule 14 CPC empower the Court to call a person who is not a party to the suit and also not before the Court to give evidence.

[6] In the light of the position as noted above, I find no merit in the revision petition. Accordingly, the same is dismissed in limine.

(B.S. Walia)
Judge

03.10.2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No