

CR No.7762 of 2018

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

**CR No.7762 of 2018
Date of Decision : 16.11.2018**

RAMIT BANTA

....PETITIONER

V/S

RAHUL KALSI

....RESPONDENT

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

Present: Mr. Suresh Kumar Kaushik, Advocate
for the petitioner.

B.S. WALIA, JUDGE (ORAL)

[1] Challenge in the revision petition is to order dated 16.10.2018 (Annexure P-5), passed by the learned Civil Judge (Junior Division), Gurugram, dismissing the application of the petitioner-plaintiff for getting opinion of handwriting expert under Section 45 of the Indian Evidence Act, 1872 (in short the Act).

[2] Brief facts of the case, leading to the filing of the instant revision petition are that the petitioner-plaintiff filed a suit for recovery of a sum of Rs.1,00,000/- against the respondent-defendant. At the stage of rebuttal evidence, the petitioner/plaintiff sought opinion of the handwriting expert on the documents (Ex. P-1 & P-2) bearing the signatures of the respondent-defendant which he had furnished in his evidence.

[3] It needs mentioning here that Ex.P-1 is the earlier agreement executed between the parties, while Ex.P-2 is the subsequent agreement, which

was executed between the parties. In corresponding paragraph No.3 of the written statement, the respondent-defendant categorically denied that the new agreement (Ex.P-2) was confirmed or signed by him, accepting all the terms and conditions. Despite the respondent-defendant having categorically denied having executed subsequent agreement (Ex. P-2) of having signed it, the petitioner-plaintiff did not lead evidence in respect thereto in the affirmative. It was only at the stage of examination of the respondent-defendant in rebuttal evidence that the aforementioned application was moved for seeking the opinion of the handwriting expert under Section 45 of the Act.

[4] The learned trial Court considered the moot point as to whether the petitioner-plaintiff was required to prove the factum of the respondent-defendant having affixed his signatures on Ex-P-1 & P-2 in his affirmative evidence and if so, whether he was within his right to file the application at the stage of rebuttal evidence, especially when he knew that the respondent-defendant had denied the execution of Ex.P-2 i.e. subsequent agreement, right from the very beginning in view of a categorical stand having been taken in the written statement in respect thereto.

[5] Admittedly, the respondent-defendant denied having executed any document subsequent to the initial agreement (Ex.P-1) by taking up a categorical stand in the written statement. In the circumstances, it was incumbent upon the petitioner-plaintiff to have led evidence in the affirmative to prove that Ex.P-2 bore the signatures of the respondent-defendant, by examining handwriting expert at the time of leading evidence in the affirmative. However, nothing of the sort was done despite the fact that the petitioner-plaintiff availed as many as 17 opportunities to lead evidence in

attempt to have Ex.P-2 examined by handwriting expert to prove that it bore the signatures of the respondent-defendant.

[6] In the aforementioned circumstances, the plea of the petitioner-plaintiff that he came to know of the respondent-defendant's denial of having appended his signatures on the subsequent agreement (Ex.P-2) for the first time during the course of his cross-examination is an argument noted to be rejected. The application not only exhibits absence of due diligence but appears to have been filed by the petitioner-plaintiff only to fill in the lacuna in the case.

[7] In view of the facts and circumstances of the case, no ground is made out warranting interference with the well reasoned order passed by the learned trial Court.

Dismissed in liminie.

(B.S. WALIA)
JUDGE

November 16, 2018
rajneesh

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