

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Revision No.8312 of 2017 (O&M)

Reserved on:20<sup>th</sup> April,2018

Decided on:26<sup>th</sup> April, 2018

Karanjeet Singh ..Petitioner

versus

Amarpreet Singh ..Respondent

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. Kanwaljit Singh, Senior Advocate,  
with Mr. Rajdeep Chugh, Advocate,  
for the petitioner.

Mr. Raman Mahajan, Advocate,  
for the respondent.

**RAMENDRA JAIN, J.**

1. Through this revision filed under Article 227 of the Constitution of India, the petitioner has prayed for setting aside order dated 01.11.2017 (Annexure P-8) of the Addl. Civil Judge (Senior Division), Chandigarh, dismissing his application seeking permission to examine handwriting expert in rebuttal evidence.

2. Learned counsel for the petitioner has assiduously argued that the learned trial court has committed a grave error in not permitting the petitioner to examine handwriting expert at the stage of rebuttal evidence holding that he was required to examine him only in affirmative evidence. He further contended that in order to arrive at a right conclusion, learned trial court should have afforded an opportunity to the petitioner to compare signatures of the respondent on the agreement to sell and other documents

Ex.P2 to Ex.P6, by getting an expert examined in rebuttal evidence, especially when the respondent-defendant, during his cross-examination, denied his signatures thereon. In support of his arguments, learned counsel for the petitioner has placed reliance upon decisions in **Kewal Singh versus Jagjit Singh** 2007 (4) R.C.R. (Civil) 631(P&H) and **Jaswinder Singh versus Rajwant Kaur and others** 2014 (36) R.C.R.(Civil) 942.

3. On the other hand, learned counsel for the respondent has vehemently contended that the learned trial court has rightly dismissed the application of the petitioner observing that the hand-writing expert cannot be allowed to be examined in rebuttal evidence, especially when it was well within the knowledge of the petitioner at the time when he was leading evidence in affirmative, which, ultimately, was closed by order of the court. In support of his arguments, learned counsel for the respondent has relied upon judicial pronouncements in **Ram Kumar versus Raj Kumar and others**, (2014-2) 174 P.L.R. 536; **Gurcharan Kaur and others versus Gurjant Singh**, (2017-3) 187 PLR 558 and **Sukhwinder Pal Singh versus Bhupinder Kaur** (2014-3) 175 PLR 20. He further contended that a party who engages a Handwriting Expert, ordinarily, he toes on his line and therefore, the application, being without any merit, is liable to be dismissed. In support of his arguments, he has relied upon judgments rendered in **Jaimal Singh and others versus Smt.Naranjan Kaur and others**, (2011-2) PLR 408 and **Gulzar Ali versus State of H.P.** JT 1998(4) SC 342.

4. Having given thoughtful consideration to the submissions raised by learned counsel for the parties, this court is of the considered view that the civil revision must succeed for the reasons to follow:-

5. A perusal of the record shows that on 15.2.2012 the plaintiff-

petitioner filed a suit for specific performance of agreement to sell dated 5.2.2011, Ex.P4., directing the defendant-respondent to get the sale deeds registered in respect of 1/6<sup>th</sup> share in SCO No.86-87 and 1/9<sup>th</sup> share in SCO No.114-115-116, Sector 17, Chandigarh, in favour of the petitioner. He further prayed that the defendant be restrained from alienating the abovesaid properties, by way of sale, gift, mortgage, will and lease etc. to any body till the final disposal of the suit.

6. During the pendency of the suit, the petitioner moved an application under Order 18 Rule 3, CPC, seeking permission to examine Dr. Jasy Ahluwalia, Handwriting Expert, in rebuttal evidence on account of the fact that the defendant, during his cross-examination, denied his signatures on the agreement to sell dated 5.2.2011, Ex.P4 and other documents Ex.P2 to P6. Therefore, the petitioner intends to examine the Hand Writing Expert to compare signatures of the respondent on these documents to falsify his deposition to this effect. It is worth mentioning that not only did the defendant deny receipt of earnest money and part payments, but he concealed his bank details from which the cheques so issued, were encashed. However, during his cross-examination, the bankers of the defendant, on the basis of record, proved the encashment of cheques by the respondent which he had received from the petitioner.

7. In reply to the application dated 30.10.2017 filed by the petitioner, the respondent has averred that on 5.5.2014 he filed written statement. The respondent, in preliminary objections, took stand that he had not executed any such agreement in respect of the properties referred to above. On the pleadings of the parties, issues were framed on 5.2.2015. The onus to prove issues nos.1,2,3,4 and 5 was on the petitioner-plaintiff,

whereas onus to prove issue no.6 regarding non-maintainability of the suit was on the respondent-defendant. On 9.11.2016, the evidence of the petitioner-plaintiff was closed by court order. Defendant also closed his evidence and the case was posted for 30.10.2017 for final submissions. The petitioner-plaintiff, after availing numerous opportunities, cannot be permitted to lead evidence by producing a Handwriting expert, in rebuttal, inasmuch as, his evidence, in affirmative, has also been closed by court order, without reserving any right to adduce evidence in rebuttal.

8. The only question that requires consideration is as to whether the petitioner can be permitted to produce a handwriting expert to prove his case, especially when the respondent denied his signatures during his cross-examination on the relevant documents, which, according to the learned counsel for the respondent, the petitioner could have done so only in affirmative evidence for the reason that the defendant had already raised a plea in the written statement submitted by him, denying his signatures on the alleged agreement to sell and other documents. Having gone through the written statement dated 5.5.2014 submitted by the respondent, it transpires that the respondent has categorically denied any execution of alleged agreement to sell dated 5.2.2011 and other documents exhibited on the record nor has he received any such amount referred to in the plaint.

9. Faced with this situation and in order to resolve the controversy between the parties, this court, for just and appropriate trial of the case, as the equity demands, deems it necessary to compare signatures of the respondent-defendant on the documents, referred to above, by examining a Hand-writing expert in rebuttal evidence by compensating the other party in terms of costs. The plea raised by learned counsel for the respondent that

the handwriting expert engaged by a party, ordinarily gives opinion in his favour, cannot at all be countenanced, especially when the petitioner cannot be deprived of his legitimate right to examine Handwriting Expert to compare signatures of the respondent-defendant on the documents, referred to above, with a view to extract the truth. However, if at all, the respondent has any grievance with respect to examination of a Hand Writing Expert, liberty is also granted to him to rebut the evidence adduced by the petitioner.

10           So far as the question of veracity of alleged signatures of the respondent-defendant on the documents, referred to above, is concerned, whether they relate to respondent or not, it would be the trial Judge, dealing with the case, who has to determine the correctness thereof on the strength of evidence available on the record at the time of deciding the suit on merit. The necessity of filing the application to get the signatures of the respondent-defendant compared by examining a Hand writing expert arose only after he, during his cross-examination, denied his signatures on alleged agreement to sell and other relevant exhibited documents referred to above. No doubt, it is true that while submitting the written statement, the respondent-defendant denied the existence of the alleged agreement to sell dated 5.2.2011 and receipt of the amount of Rs.8 lac as earnest money and thereafter part payments, allegedly, made to him. During the course of arguments, learned counsel for the respondent has not denied this fact that in case of signatures being disputed, the Hand-writing expert cannot be examined as a witness at any stage of the case. Rather, argument raised by learned counsel for the respondent was that the petitioner was required to examine the Hand-writing expert in affirmative and not in rebuttal evidence.

A perusal of averments in the application shows that the respondent encashed the alleged cheques, which he had got from the petitioner. In such circumstances, this court feels that for arriving at a right conclusion in the case, no prejudice, at this stage, in the considered opinion of this court, would be caused to the respondent, in case only one effective opportunity is granted to the petitioner to examine the Hand-writing expert on the date, so fixed by the trial court. However, it is made clear that in case the respondent, so chooses, to rebut the evidence of the petitioner by way of leading evidence, the trial court would be at liberty to provide him one opportunity to rebut the evidence of the petitioner.

11           The facts and circumstances of judgments delivered by various courts, as cited above, are always not akin to each other. They are decided as per their own facts and circumstances independently. In such circumstances, this court is not in disagreement with the law laid down in the authorities relied upon by both the learned counsel for the parties in support of their respective contentions, but keeping in view the peculiar facts and circumstances of case in hand and for arriving at a fair trial of the case, this court deems it appropriate to provide, at least, one opportunity to both the parties to prove their respective claims put forth by them on the record.

12           In the light of the aforesaid discussions, the instant revision petition is accepted. Consequently, impugned order dated 01.11.2017 (Annexure P-8) passed by Addl. Civil Judge (Senior Division), Chandigarh, dismissing the application of the petitioner seeking permission to examine handwriting expert in rebuttal evidence, is set aside. The trial court is directed to permit the petitioner-plaintiff to produce a Handwriting Expert

to compare signatures of the respondent-defendant on the alleged documents, referred to above, in accordance with law. However, the petitioner is burdened with costs of Rs.10,000/- to be paid to the Legal Services Authority, Union Territory, Chandigarh. The payment of costs would be a condition precedent for further prosecution of the suit.

26<sup>th</sup> April, 2018  
VK

( RAMENDRA JAIN )  
JUDGE

- |    |                           |        |
|----|---------------------------|--------|
| 1. | Whether speaking/reasoned | Yes/No |
| 2. | <b>Whether Reportable</b> | Yes/No |