

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

**CR No.3254 of 2018(O&M)
Date of Decision: 26.08.2019**

**Nikung Kumar Lohia (since deceased) through LRs
.....Petitioners**

Versus

**M/s Amar Construction Company and others
.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Deepak Jindal, Advocate
for the petitioners.

Mr. Lokesh Sinhal, Advocate
for respondents No.1 to 4.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 17.04.2018 passed by Civil Judge (Senior Division), Faridabad, vide which prayer for examination of handwriting expert to disprove the signature of the petitioner/defendant No.1 on receipt dated 29.04.1982 was

rejected.

[2]. Perusal of the record would show that respondents/plaintiffs filed a suit for specific performance of agreement to sell dated 12.04.1980. No receipt dated 29.04.1982 was pleaded in the suit except to allege that on 29.04.1982, an amount of Rs.1,00,000/- was paid to the defendants.

[3]. In reply to para No.4 of the plaint, defendants No.1 to 4 and 7 submitted that the plaintiffs had themselves repudiated the agreement before expiry of four months from the date of its execution by conveying to defendant No.1 their inability to manage the requisite funds. In a way, agreement to sell was denied. On merits, para No.4 of the plaint was not admitted. The agreement to sell stipulated payment of Rs.1,00,000/- to defendant No.1 and the time frame was set out in the agreement itself. Only an amount of Rs.1,00,000/- was paid. No other amount was paid much less the amount of Rs.1,00,000/- on 29.04.1982 or on any other date.

[4]. Vide order dated 25.03.1987, defence of the defendants was struck off for want of compliance of earlier order of filing better particulars. The revocation of order dated 25.03.1987 was sought vide application dated 19.09.1990. The ground for revocation of order was pleaded that during evidence

of the plaintiffs receipt-cum-agreement was found to be forged and fabricated.

[5]. Vide order dated 24.01.1991, the application filed by the defendants/petitioners for revocation of order dated 25.03.1987 was dismissed. However, defendants were given liberty to lead evidence in rebuttal to the allegations made in the plaint. Defendants were not allowed to lead evidence in respect of defence.

[6]. Defendant No.1 filed an application dated 30.03.2016 for granting permission to fingerprint and handwriting expert to take photographs of signatures of Nikunj Kumar Lohia on receipt dated 29.04.1982 purportedly executed by him in favour of M/s Amar Construction. On the left portion of the said application, it was alleged by the Court by reciting 'allowed as per rules'.

[7]. The aforesaid recital was opposed by the plaintiffs/respondents on the ground that vide order dated 07.03.1991, it was recorded by the trial Court that learned counsel for the defendants had submitted that he was not to lead any further evidence. Order dated 07.03.1991 was never challenged by defendant No.1. The evidence of the defendants had already been closed. No application for additional evidence was filed at any point of time. Plaintiffs have already examined

Veer Kumar Sakhuja, Handwriting and Fingerprint Expert as PW-4. The witness was cross-examined by the defendants/petitioners. Even while appearing as DW-6, defendant No.1 has submitted that receipt Ex.PW5/A has been seen and the same did not carry his signature. Leading of expert evidence in respect of receipt dated 29.04.1982 cannot be held to be rebuttal to the plaint.

[8]. Vide the impugned order, it has been observed that the order dated 24.01.1991 had attained finality. Order dated 07.03.1991 has also not been challenged by the petitioners. Clarification has been given that the defendants were granted liberty to lead evidence in rebuttal to the evidence of the plaintiffs strictly in terms of order dated 24.01.1991 passed by Additional Senior Sub Judge, Faridabad, vide which defendants were granted permission to adduce evidence in rebuttal to the allegations made in the plaint and they were not entitled to lead evidence in respect of any other defences. The aforesaid order was passed on the prayer for revocation of order dated 25.03.1987, vide which defence of the defendants was struck off. Petitioners cannot put the clock back and endorsement on the application dated 30.03.2016 has been rightly set aside and the application for examining handwriting and fingerprint expert to disprove the signature of the petitioner/defendant No.1 on

receipt dated 29.04.1982 has been rightly rejected.

[9]. In view of above, this revision petition is found to be totally devoid of merits and is accordingly dismissed.

26.08.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No