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

CR-3905-2017 (O&M)

Date of decision : 11.01.2019

Jasdeep Singh Makkar

... Petitioner

Versus

Brilliant Brainz Educational Society (Regd.) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Vivek Salathia, Advocate
for respondent Nos.1 and 2.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the petitioner-plaintiff for examination of handwriting expert to prove the admitted signatures of defendants, which came to light at the stage of defendant's evidence i.e. document (Ex.P1), has been declined.

Learned counsel appearing on behalf of the petitioner-plaintiff submitted that the plaintiff instituted a suit for recovery of ₹9,15,632/- against the society by arraying the President as defendant No.2 and various other members as defendants on the premise that he was one of the members of the society and had been actively working since its inception. During this period, the defendants had issued a letter dated 18.01.2011, admitting the

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claim of the plaintiff regarding the fixation of the honorarium, travelling allowance as well as reimbursement of the mobile expenses, which was accepted by the plaintiff and the plaintiff started functioning as a Director. Even one car was also provided to the plaintiff, which was in the name of the other person. Since difference arose between the plaintiff and the defendants instead of making the payment of the bills, the defendants moved an application to the police authorities, where a compromise was effected with regard to the car, but again a false complaint was made and the car was returned by the plaintiff, however, the expenses incurred by the plaintiff were due and on perpetual requests, had not been paid, therefore, a cause of action arose to file the suit.

The defendants, who denied the execution of the letter (Ex.P1) and various other documents, but admitted signatures were not available on record, therefore, the plaintiff could not lead evidence in affirmative to prove the signatures. When the matter was slated for the defendants' evidence, the defendant gave a specimen signatures and submitted an application for taking the assistance of Expert, which was allowed and the report regarding examination of the document (Ex.P1) with admitted signatures. Owing to the non-availability of the documents, a cause of action arose for submitting the application, the trial Court ought not to have applied the provisions of Order 18 Rule 3 of CPC, but should have treated the application as additional evidence. In support of his contentions, reliance has been laid to ratio decidendi culled out by this Court in **“Kulwant Singh V/s Chand Singh etc.” 2014 (72) RCR (Civil) 245.**

Mr. Vivek Salathia, learned counsel appearing on behalf of the

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respondents supported the impugned order on the premise that in the absence of issue of rebuttal, the application could not have been allowed as the onus is upon the plaintiff, failed to discharge and it tantamounts to fill up the lacuna, which is not permissible in law. Once there is a complete denial of the agreement, the plaintiff should have moved an application for calling the defendant to give the specimen signatures and in the absence of the same, adverse inference should have been drawn, thus, urges this Court for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sodhi, for, it is a matter of record that the specimen signatures of the defendants came to light at the stage of defendants' evidence. The plaintiff was circumspect of not moving the application calling upon the defendant to give specimen signatures. A cause of action only arose, when evidence of the defendants was closed as the defendants have availed the remedy of expert, attempting to disbelieve the Ex.P1. In such circumstances, the Court below should not have adopted the harsh approach, but pragmatically treated the application as additional evidence in view of the law laid by this Court in **Kulwant Singh's case** (supra). For the sake of brevity, para No.9 of the judgment reads as under:-

"9. Taking the request of the plaintiff to produce this evidence as additional evidence under Section 151 CPC, the plaintiff is allowed to examine handwriting and finger print expert as a witness whose report is already on the file. Cross examination would be completed on the same day itself."

Keeping in view the aforementioned facts, the impugned order,

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under challenge, is not sustainable in the eyes of law, much less, without jurisdiction and the same is hereby set aside. Resultantly, the present revision petition stands allowed subject to the payment of costs of ₹5,000/-, which shall be condition precedent.

11.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**