

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

Sr. No.205

C.R. No.4591 of 2016

Date of decision: 17.01.2019

Gurmeet Kaur

....Petitioner

versus

Darshan Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Jatinder Nagpal, Advocate
for the petitioner.

Mr. Virendra Rana, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 26.05.2016 passed by the Additional Civil Judge (Senior Division), Dhuri (for short – the Trial Court) dismissing the application filed by the petitioner for discarding the affidavit and report of Hand writing and Finger Print Expert produced at the instance of the respondent/plaintiff.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent had filed a suit seeking therein to recover from the petitioner a sum of ₹4,90,000/- alongwith future interest. The respondent had based his claim primarily on a pronote and receipt allegedly executed by the petitioner's late husband. On being put to notice, the petitioner appeared before the Trial Court and filed a written statement inter alia taking therein several primary objections as also

a stand on merits that the pronote and receipt relied upon by the respondent were forged and fictitious. On the dispute between the parties, the Trial Court framed issues on which both parties led their respective evidence. At the stage of rebuttal evidence, the respondent filed an application seeking permission therein of the Trial Court to inspect the judicial record for taking photographs of the signatures of the petitioner's late husband and then to get them compared with his signatures on the documents already on the record which had been summoned from the Office of the Sub-Registrar, Dhuri. Such permission was granted by the Trial Court in pursuance of which photographs of the signatures of the petitioner's late husband were taken from the judicial record and sent for comparison to H.S. Mander, who is a Handwriting and Finger Print Expert, Barnala (for short – 'the Expert'). After comparison of the signatures of the petitioner's late husband from the judicial file with his admitted signatures procured from the documents summoned from the Office of the Sub-Registrar, Dhuri, the Expert submitted his report. The report of the Expert was tendered and in order to prove the same, the respondent produced the Expert as his witness, who was examined-in-chief. Thereafter, at the stage of cross-examination of the Expert, the petitioner filed an application seeking rejection of the affidavit filed by the Expert as his examination-in-chief as also his report on the ground that a Handwriting Expert could not have been examined in rebuttal. The Trial Court dismissed the petitioner's application through the order under challenge in the present proceedings.

Learned counsel for the parties have been heard.

The respondent's recovery suit is primarily based on a pronote and receipt allegedly executed by the petitioner's late husband. Per contra, it

is inter alia the petitioner's case that no such pronote or receipt was ever signed by her late husband and that such documents are forged and fabricated. In support of their respective claims both parties have led evidence. However, when the matter was listed for rebuttal evidence, the respondent filed an application seeking permission of the Trial Court to take photographs of the signatures of the petitioner's late husband on the aforesaid pronote and receipt which had already been produced on the judicial record and then having them compared with his admitted signatures. The Trial Court granted such permission in pursuance of which the photographs, as prayed for were taken. Thereafter, the Expert compared the same with the admitted signatures of the petitioner's late husband and gave his report. Such report was tendered into evidence and then to prove the same the author of the report was produced and examined-in-chief. It was only at the time of his cross-examination that the petitioner filed the instant application seeking to discard the evidence of the Expert both oral and documentary. No such objection was raised by the petitioner at the time when the respondent summoned the record from the Office of the Sub-Registrar, Dhuri, which contained the admitted signatures of the petitioner's late husband. Even thereafter, the petitioner raised no objection to the application filed by the respondent seeking permission of the Trial Court to take photographs of the signatures of the petitioner's late husband from the judicial record as also at the time the order of the Trial Court was passed granting the sought permission. Thereafter, the Expert made comparison of the signatures of the petitioner's late husband and filed a report. When such report was tendered in evidence, at that time too, no objection was raised by the petitioner. Rather, after the aforesaid expert had been examined-in-chief,

learned counsel appearing on behalf of the petitioner sought and got an adjournment to cross-examine him but on the adjourned date filed an application raising objections to the leading of expert evidence by the respondent.

The above facts clearly show that in fact, the petitioner had passively permitted the expert evidence to come on record by not having even raised a little finger before the filing of the instant application. Now it is too late in the day for the petitioner to raise the objections sought to be raised by her especially when such evidence was now on record and the petitioner would be granted adequate opportunity to cross-examine the Expert as also for the reason that such evidence would throw adequate light on the controversy between the parties and assist the Trial Court in arriving at a just conclusion.

Dismissed.

(DEEPAK SIBAL)
JUDGE

January 17, 2019
Jyoti 1

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