

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

**CR No.5416 of 2018 (O&M)
Date of Decision:17.09.2019**

JAGDISH

...Petitioner

Versus

RAMSARUP

..Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Naresh Kaushik, Advocate for
Mr. J.S.Saneta, Advocate
for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 27.07.2018 passed by the Additional Civil Judge (Senior Division), Charkhi Dadri (for short-the Trial Court) through which an application preferred by the petitioner seeking therein to lead additional evidence has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that the petitioner filed a suit seeking therein to recover from the respondent an amount of ₹5,23,800/- along with future interest. Such claim was based on a pronote and a receipt on which the respondent had allegedly appended his signatures in the Hindi language.

On being put to notice, the respondent who was the sole defendant in the suit appeared before the Trial Court and disputed the petitioner's claim. *Inter alia* the case set up by the respondent was that the pronote and receipt relied upon by the petitioner-plaintiff had not been executed by him and that the signatures thereupon were not his.

The Trial Court framed issues after which both the parties led their respective evidence. When the matter was listed for arguments. The petitioner filed an application seeking therein to lead the additional evidence in the form of summoning of records from the bank from which the respondent had taken a loan so that his signatures in the bank records could be compared with the pronote and the receipt which virtually formed the basis of the petitioner's suit. The Trial Court dismissed the petitioner's application on the ground that such evidence should have been led by the petitioner at the time when he was leading his evidence in the affirmative.

Learned counsel for the petitioner submitted that the pronote and the receipt which formed the basis of the petitioner's recovery suit contained the respondent's signatures in the Hindi language. The respondent in his written statement filed before the Trial Court had denied those signatures and rather cleverly on the vakalatnama, written statement and his examination-in-chief, he had put his thumb impression to give an impression that he did not know how to append signatures. It was only during the course of his cross examination that it could be extracted out of the respondent that he in fact knew how to append signatures in the Hindi language and that he had done so while taking a loan from a bank. As soon as this fact was revealed, an application was preferred by the petitioner to

summon the record of the bank from which the respondent had taken loan wherein he had admittedly appended his signatures in the Hindi language to get the same compared by an expert with his signatures on the pronote and receipt which formed the basis of the petitioner's recovery suit.

Learned counsel for the respondent submitted that once the respondent had denied his signatures on the pronote and receipt which formed the basis of the petitioner's recovery suit, it was for the petitioner to prove the respondent's signatures on the pronote and receipt during the course of leading his evidence in the affirmative and having failed to do so, through the order impugned by the petitioner, the Trial Court rightly denied him permission.

Once the respondent had denied his signatures on the pronote and receipt which formed the basis of the petitioner's recovery suit filed by him against the respondent, in normal circumstances it was for the petitioner to prove the signatures thereupon to be that of the respondent while leading his evidence in affirmative. However, in the peculiar facts of the present case the respondent, after denying his signatures on the aforesaid pronote and receipt, by putting his thumb impression on the vakalatnama, written statement and on his examination-in-chief attempted to give an impression that he did not append signatures on documents. However, only during the course of his cross-examination could it be extracted from the respondent that in fact he does append signatures in the Hindi language and that he had done so while taking a loan from a bank.

The fact with regard to the respondent attesting documents by appending his signatures thereupon could be extracted from the respondent

only during the course of his cross-examination while he appeared as DW1. Such fact had been attempted to be concealed by him earlier. Thus, the petitioner was well within his rights to thereafter move an application to seek orders from the Trial Court to summon the respondent's loan file from the bank from where he had taken loan which file contained his admitted signatures and then get the same compared by an expert with his disputed signatures on the pronote and the receipt which formed the sole basis of petitioner's recovery suit.

The evidence sought to be produced by the petitioner would also go to the root of the matter and assist the Court to arrive at a just decision.

No prejudice would be also caused to the respondent as he would get an opportunity to not only lead expert evidence in rebuttal but before that also have the right to cross-examine the petitioner's expert witness.

In view of the above, after setting aside the impugned order, the present petition is allowed in the above terms.

September 17, 2019

Jyoti-IV

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned Yes/No Whether Reportable Yes/No