

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 109

Case No. : C. R. No. 6115 of 2018

Date of Decision : January 08, 2019

Ravinder Kumar Petitioner

vs.

Surjit Singh Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. K. B. Raheja, Advocate
for the petitioner.

Mr. S. K. Arora, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral) :

Through the present petition, challenge is made to order dated 01.08.2018, passed by the Civil Judge (Senior Division), Ferozepur (for short – the Trial Court), dismissing the application filed by the petitioner-defendant, through which he had sought issuance of directions to the respondent-plaintiff to appear in the Court and give his photograph as well as sample voice to be recorded in the presence of the Court and sent to the Forensic Laboratory, Hyderabad or any other Government Laboratory for comparison with an audio-video conversation dated 18.10.2010, qua which Compact Disc (CD) (Ex.D-2) was already on the judicial record.

The facts, in brief, which may be noticed for finally adjudicating upon the present petition are that the respondent filed a suit seeking therein specific performance of agreement to sell dated 24.12.2009, allegedly executed by the petitioner-Ravinder Kumar. On being put to

notice, the petitioner, who was the defendant in the suit, appeared before the trial court and filed a written statement through which he inter alia submitted that on receipt of summons and copy of the plaint from the Court, the petitioner-defendant, along with his brothers, namely Ashok Kumar and Rajesh Kumar etc. visited the house of the respondent-plaintiff on 18.10.2010 at about 08:30 PM, where the respondent-plaintiff in a direct conversation with the petitioner-defendant and his brothers namely Ashok Kumar and Rajesh Kumar admitted to have not entered into any agreement between them as also to have not paid any earnest money. The petitioner recorded the entire conversation on a cell phone and made a CD. During the course of leading his evidence, the petitioner-defendant produced the CD as Ex.D-2 and thereafter, filed an application before the Trial Court seeking a direction to be issued to the respondent-plaintiff to appear in person in the Court and to give his photograph as well as sample voice to be recorded in the presence of the Court to be sent to Forensic Laboratory Hyderabad or any other Government Laboratory for comparison with the audio-video conversation dated 18.10.2010. The application was dismissed by the Trial Court occasioning the filing of the present petition.

Counsel for the parties have been heard.

The respondent has filed a suit seeking therein specific performance of the agreement to sell dated 24.12.2009. On being put to notice, the petitioner, who is the defendant in the suit, appeared before the Trial Court and filed a written statement wherein he specifically averred that on receipt of summons and copy of the plaint from the Court, he along with his brothers Ashok Kumar and Rajesh Kumar visited the house of the

plaintiff on 18.10.2010 at about 08:30 PM and during such visit, the respondent-plaintiff admitted to have not entered into any agreement dated 24.12.2009 as also to have not paid any earnest money. Such conversation was recorded on the cell phone of one Sahil and the same was converted into a CD. The CD was produced before the Court by the petitioner-defendant as Ex.D-2 and in order to prove the same, an application had been preferred by the petitioner seeking the issuance of a direction to the respondent-plaintiff to appear in person in the Court and to give his photograph as well as his voice sample to be recorded in the presence of the Court for sending the same to Forensic Laboratory at Hyderabad or any other Government Laboratory so that the same could be compared with his alleged voice in the aforesaid CD already produced by the petitioner as Ex.D-2. The Trial Court found contradiction in the pleadings by the petitioner in his written statement and the application filed by him for issuance of the aforesaid directions and therefore, on that sole ground, dismissed the petitioner's application.

A perusal of the written statement shows that the petitioner therein had clearly stated that on 18.10.2010, he along with his brothers namely Ashok Kumar and Rajesh Kumar had visited the respondent's house when the respondent, in a direct conversation with the petitioner and his brothers Ashok Kumar and Rajesh Kumar, had admitted to have not entered into any agreement dated 24.12.2009 as also from giving any earnest money. It was further pleaded by the petitioner that such conversation was duly recorded on a cell phone and later converted into a CD. In the application filed by the petitioner seeking the voice samples of the

respondent, he has referred to the defence taken in the written statement and thereafter, the alleged aforesaid conversation between the respondent and his brother Ashok Kumar on 18.10.2010 at about 08:30 PM.

As noticed above, in the application, the petitioner has first referred to the defence taken by him in his written statement and then illustratively referred to the alleged conversation between the respondent and his brother Ashok Kumar on 18.10.2010 at about 08:30 PM. Just because in the application the petitioner has not specifically referred to the name of one of his brothers namely Rajesh Kumar, it cannot be said that there was contradiction in the pleadings in the petitioner's application and his written statement especially when he starts the second paragraph of the application by making a specific reference to the defence taken by him in his written statement. The view taken by the Trial Court is found to be hyper-technical.

Even otherwise, the evidence which the petitioner seeks to produce, would certainly throw light on the dispute between the parties and would assist the Trial Court in the adjudication of the dispute between them.

In view of the above, the impugned order is set aside and the application filed by the petitioner (Annexure P-3) is allowed.

The petition is allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

January 08, 2019

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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>