

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

**C.R. No.6827 of 2016 (O&M)
Date of Decision.16.01.2019**

Ajmer Singh (since deceased) through LRs ...Petitioner

Vs

Baljit Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aakash Singla, Advocate
for the petitioner.

Mr. Ishan Gupta, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present revision petition has been preferred by the petitioner-defendant No.1 against the impugned orders dated 17.8.2016, 9.9.2016 and 28.9.2016 (Annexure P-7, P-9 and P-10 respectively) passed in the suit filed by the respondent-plaintiff for possession by way of specific performance of agreement to sell dated 30.11.2009 (Anenxure P-1).

The petitioner-defendant denied the execution of the aforementioned agreement and stated to be a forged document.

The trial Court framed six issues including issue No.4 with regard to forgery and fabrication.

Both the parties have examined experts. During the pendency of the suit, plaintiff filed report of the Finger Print Bureau, Phillaur, which revealed that thumb impression were sufficiently ink smudged, cause of action accrued to move application dated 10.08.2015 (P-2) by the petitioner-defendant No.1 for sending the

original agreement, specimen and standard thumb impression of petitioner-defendant to Govt. Forensic Laboratory at New Delhi or Shimla.

The aforementioned application was allowed vide order dated 25.01.2016 (Annexure P-3) and the petitioner-defendant was given direction to give specimen thumb impressions and place on record receipt of deposit of requisite fee with the CFSL. The department of CFSL did not accept the money, in view of the fact that CFSL, New Delhi vide order dated 3.2.2016 (P-4) showed their handicapness owing to non-availability of the facility.

Another application dated 18.04.2016 (P-5) was filed for sending the agreement dated 30.11.2009 for comparing the thumb impression of petitioner-defendant and the same was also allowed vide order dated 1.8.2016 (P-6), operative part of which reads as under:-

“Defendant No.1 Ajmer Singh is directed to deposit the requisite fee required to be paid to the CFSL, CBI, Block 4, CGO Complex, Lodhi Road, New Delhi-3 as per rules. The defendant is also directed to appear in the Court for purpose of taking his specimen thumb impressions and thereafter the disputed document and thumb impressions taken in the Court be sent to CFSL, CBI, Block 4, CGO Complex, Lodhi Road, New Delhi-3 for the purpose of comparison at the costs of defendant No.1. The defendant is also directed to produce the receipt of fees deposited with the CFSL, CBI, Block 4,

CGO Complex, Lodhi Road, New Delhi-3. Now to come up on 17.8.2016 for producing the receipt.”

CFSL CBI, New Delhi gave opinion free of cost but the trial Court vide order dated 09.09.2016 (P-9) imposed condition that expert would come to the Court and compare the thumb impressions on the original agreement to sell with his specimen signatures in view of record being sensitive. On 28.09.2016 (P-10), trial Court had also fastened the liability upon the petitioner-defendant No.1 to arrange the finger print expert from the office of said authority.

Mr. Aakash Singla, learned counsel for the petitioner submitted that it is the duty of the Court to summon the witnesses in view of the order dated 01.08.2016 (P-6) and liability cannot be fastened upon the petitioner-defendant No.1. In support of the contention, relied upon provisions of Order 16 Rule 12 (2) CPC.

Per contra, Mr. Ishan Gupta, learned counsel appearing on behalf of respondent No.1 submitted that apprehension expressed by the petitioner is far fetched, as the order dated 01.08.2016 came to be passed on his application. It is his requirement to get the witness summoned and examined and on failure of the same, liability of the defendant is to be fixed, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. It would be in the fitness of things to reproduce provisions of Order 16 Rule 12 CPC and operative part of order dated 28.09.2016:-

“12. Procedure If witness falls to appear.- (1) The court may, where such person does not appear, or appears but fails

so to satisfy the court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may Order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into court the costs and fine aforesaid, the court shall Order the property to be released from attachment.

(2) Notwithstanding that the court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule(3) of that rule, the court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.

Order dated 28.09.2016.

...However, it is better in the interest of justice that the office of Director of C.F.S.L.(CBI) New Delhi to depute any reasonable person to collect the specimen thumb impression in the presence of both the counsels at the cost of defendant No.1 Ajmer Singh son of Bishan Singh. After going through the relevant documents from the case file, the finger print expert is also directed to give his report on or before 14.10.2016. Short adjournment is granted as the present case falls within the list of Action Plan Cases targeted by Hon'ble Punjab and Haryana High Court. The applicant/defendant No.1 Ajmer Singh is directed to get the certified copy of the order immediately and brought into the office of Director, C.F.S.L. (C.B.I.), Block-IV, CGO Complex, Lodhi Road, New Delhi-3. He can get the assistance for the procurement of the service of concerned authority through Civil and Judicial court situated in the area of South-East, New Delhi. The concerned authority is also

requested to give personal attention to get examine the specimen thumb impressions for the purpose of examination and comparison without any undue delay. It will be last opportunity for the applicant/defendant No.1 to get arrange the finger print expert from the office of said authority. For that purpose, to come upon 17.10.2016.”

As the order dated 01.08.2016 for the purpose of examination of specimen thumb impression of the petitioner-defendant No.1 with agreement to sell is not in dispute, liability to summon the witness, particularly, when the order dated 01.08.2016 attained finality, cannot be fastened upon the petitioner-defendant No.1. In case the concerned person from the office of Director, CFSL (CBI) does not come forward, the order of the Court has to be implemented by the Court itself with assistance of the defendant by depositing diet money etc., in view of the provisions aforementioned. Even if the case has been brought within the action plan, the trial Court is directed to follow aforementioned provisions.

In view of aforementioned circumstances, the orders under challenge are modified and the revision petition is disposed of with direction to the trial Court to comply with aforementioned provisions for implementation of the order dated 01.08.2016 in accordance with law.

(AMIT RAWAL)
JUDGE

January 16, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No