

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

Sr. No.120+267

CR-1427-2019 (O&M)
Date of decision: 18.07.2019

M/s Vikram Electric Equipment (Pvt.) Ltd.

....Petitioner

versus

Avdesh Pandey

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Harsh Bungar, Advocate
for the petitioner.

Mr. Ashish Aggarwal, Senior Advocate with
Ms. Shemona Sabharwal, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 01.02.2019 passed by the Additional Civil Judge (Senior Division), Gurugram (for short – the Trial Court) through which an application filed by the respondent for sending the General Power of Attorney dated 20.09.2005 and agreement dated 08.04.2005 alongwith account opening form and Specimen Sheet (for short – the disputed documents) to the Forensic Science Laboratory , Madhuban (for short – the FSL, Madhuban), has been allowed.

The facts, in brief, which are required to be noticed for

adjudicating upon the present petition are that in the year 2008, the petitioner filed a suit seeking therein to recover from the respondent an amount of Rs.1,49,20,937/- alongwith future interest. On being put to notice, the respondent, who was the defendant in the suit, appeared before the Trial Court and filed a written statement through which he contested the petitioner's suit. On the dispute between the parties, the Trial Court framed issues after which the petitioner/plaintiff led his entire evidence.

While leading his evidence, the respondent/defendant led expert evidence to prove a General Power of Attorney dated 20.09.2005 allegedly executed by one Shivraj Singh Dabra in favour of one Dharampal and agreement dated 08.04.2005 allegedly executed by said Shivraj Singh Dabra with the petitioner-Company to be forged and fabricated. As per the respondent's expert, the signatures on the aforesaid documents were not that of Shivraj Singh Dabra. Since the afore-referred expert evidence led by the respondent had come up for the first time in the trial, the petitioner filed an application seeking permission of the Trial Court to lead expert evidence in rebuttal. Through its order dated 14.01.2015, the Trial Court allowed the petitioner's application.

The respondent challenged the aforesaid order of the Trial Court before this Court through **CR No.638 of 2015 – Avdesh Pandey vs. M/s Vikram Electric Equipment (Pvt.) Limited**. The said revision petition was disposed of by this Court after permitting the petitioner to lead expert evidence to rebut the expert evidence produced by the respondent. However, such evidence to be led by the petitioner was termed by this Court as additional evidence. This Court further held the respondent entitled to lead evidence in rebuttal to the same. On the prayer made by the respondent

to lead rebuttal evidence in the form of examination of the disputed documents by the FSL, Madhuban, this Court granted him liberty to move the Trial Court for the said purpose.

In accordance with the permission granted, as above, to prove the authenticity and genuineness of the disputed documents, the petitioner led its expert evidence.

In terms of the liberty granted by this Court, the respondent filed an application before the Trial Court for sending the disputed documents for examination by the FSL, Madhuban. According to the respondent, he had already led evidence to prove that the disputed documents were forged and fabricated. Through the evidence led by him a hand writing expert had categorically opined that the alleged signatures on the disputed documents of Shivraj Singh Dabra were distinct from his admitted signatures. As per the respondent, through its expert evidence the petitioner had mislead the Court and since the report given by the hand writing expert produced by the petitioner was in variance with the report given by the expert produced by the respondent, the disputed documents were required to be sent for examination to the FSL, Madhuban.

The petitioner filed a reply to the respondent's application through which it was denied that the disputed documents were forged or fabricated. It was further denied that through evidence led by the respondent he had substantiated that the disputed documents were forged and that the report given by the expert produced by the petitioner was a false and procured one. It was further denied that the petitioner had misled the Trial Court through its expert evidence. Accordingly, the prayer made by the respondent for sending of the disputed documents to the FSL, Madhuban

was opposed and the dismissal of the respondent's application was sought.

Through its order dated 01.02.2019, the Trial Court allowed the respondent's application for sending the disputed documents for examination by the FSL, Madhuban. Such order has been challenged through the present proceedings.

Learned counsel for the petitioner submitted that the order impugned through the present proceedings is liable to be set aside solely on the ground that the same does not contain any reasons as to why the respondent's application for sending the disputed documents for examination by the FSL, Madhuban had been allowed especially when such prayer made by the respondent had been contested by the petitioner both through a written reply as also through submissions made before the Trial Court.

Learned counsel for the respondent submitted that the Trial Court had issued directions for sending the disputed documents for examination by the FSL, Madhuban as per the permission already granted by this Court through its order dated 25.04.2018 passed in **CR No.638 of 2015 – Avdesh Pandey vs. M/s Vikram Electric Equipment (Pvt.) Limited** which permission had not been challenged by the petitioner before any superior Court. That being so, no further reasons were required to be given by the Trial Court.

While leading his evidence, the respondent/defendant had produced expert evidence to prove that the General Power of Attorney dated 20.09.2005 allegedly executed between one Shivraj Singh Dabra and one Dharampal and the agreement dated 08.04.2005 between the aforesaid Shivraj Singh Dabra with the petitioner did not contain Shivraj Singh

Dabra's signatures and therefore, these documents were forged and fabricated. Such opinion had been formed after the signatures of the aforesaid Shivraj Singh Dabra had been compared by the respondent's expert with his alleged specimen signatures. Since such expert evidence had come for the first time, on the record of the Trial Court, the petitioner/plaintiff filed an application before the Trial Court seeking therein its permission to rebut the respondent's expert evidence through leading of its expert evidence. Such prayer made by the petitioner was allowed by the Trial Court through its order dated 14.01.2015 which was challenged by the respondent before this Court in **CR No.638 of 2015 – Avdesh Pandey vs. M/s Vikram Electric Equipment (Pvt.) Limited**. Such petition was disposed of by this Court on 25.04.2018 in the following terms:-

“I am of the view that unluckily, in this case, when a new plea in replication was taken that an agreement dated 08.04.2005 exists between the plaintiff and Shiv Raj Dabra and that Shiv Raj Dabra had appointed Dharampal as Attorney, the additional written statement was required to be called for, which inadvertently was not called for. The result is that there is no issue on the said document pleaded in the replication.

Now, the defendant has led the evidence that the said document is forged. Therefore, the plaintiff is required to rebut the said evidence.

I am of the view that in the given circumstances, since this Court finds that it is necessary to rebut the said evidence and there is no issue of rebuttal and the permission granted by the trial Court to the plaintiff to lead the evidence of an expert in rebuttal can be treated as permission to lead additional evidence, which is

necessary to rebut the evidence of the defendant. Since, the additional evidence has been allowed, the plaintiff be permitted to lead evidence of the expert in additional evidence.

Learned counsel for the petitioner at this stage has stated that he has no objection, if the said document is sent to the FSL.

However, learned counsel for the respondent does not consent for the same.

It being so, when the additional evidence is led, the present petitioner-defendant shall be entitled to rebuttal of the same and in the said rebuttal, he shall be at liberty to move before the trial Court for sending the said document to the FSL for examination.

As such, the present petition is disposed of.”

As per the afore-quoted order, the permission granted by the Trial Court to the petitioner to lead expert evidence to rebut the expert evidence produced by the respondent was sustained. However, the same was ordered to be termed as additional evidence. The respondent was further granted a right to lead evidence in rebuttal to the expert evidence to be led by the petitioner. However, so far as the prayer made by the respondent for sending the disputed documents for examination to the FSL, Madhuban was concerned, no direction in this regard was issued by this Court. The respondent was granted liberty to move the Trial Court for the same.

After the petitioner had led its expert evidence, in terms of the liberty granted by this Court, the respondent filed an application before the Trial Court for sending the disputed documents for examination by the FSL, Madhuban. The petitioner filed a reply to the application filed by the respondent through which it was denied that the disputed documents were

forged or fabricated. It was further denied that through evidence led by the respondent he had substantiated that the disputed documents were forged and that the report given by the expert produced by the petitioner was a false and procured one. It was further denied that the petitioner had misled the Trial Court through the expert evidence led by it and that this Court, through the afore-quoted order dated 25.04.2018, had granted permission to the respondent for sending of the disputed documents to the FSL, Madhuban. The prayer made by the respondent for sending of the disputed documents to the FSL, Madhuban was opposed and the dismissal of the respondent's application was sought.

On 01.02.2019, through the order impugned in the present proceedings, the Trial Court allowed the respondent's application. Such order reads as under:-

“Arguments advanced and same were heard on the application for sending the General Power of Attorney dated 20.09.2015 and agreement dated 08.04.2005 along with the account opening from Ex.DW1/A and Specimen Sheet Ex.DW1/B to FSL, Madhuban.

The perusal of the order dated 25.04.2018 passed in CR No.638 of 2015 by Hon'ble Punjab and Haryana High Court show that the remedy to the rebuttal of additional evidence led by plaintiff was granted to the defendant. He was given the liberty to move before the Trial Court for sending the said documents for examination in FSL. Accordingly, application in hand is, hereby, allowed and documents mentioned in the application i.e. General Power of Attorney dated 20.09.2015 and agreement dated 08.04.2005

alongwith the account opening form Ex.DW1/A and specimen sheet Ex.DW1/B be sent to FSL, Madhuban.

Now to come up on 20.02.2019 for awaiting report from FSL.”

A perusal of the afore-quoted order reveals that the respondent's application for sending the disputed documents for examination by the FSL, Madhuban has been allowed without assigning any reasons whatsoever. As per the order, learned counsel for the parties had advanced arguments in support of their respective stand before the Trial Court. However, this Court is at a loss to decipher from the order as to what pleas were raised by either side and how were they dealt with by the Trial Court.

The Trial Court has simply observed that through order dated 25.04.2018, this Court had granted liberty to the respondent to move the Trial Court for sending the disputed documents for examination by the FSL, Madhuban and accordingly allowed the application.

A perusal of the afore-quoted order of this Court dated 25.04.2018 reveals that a prayer was made by the respondent with regard to getting the disputed documents examined by the FSL, Madhuban. Such prayer was opposed by learned counsel for the petitioner. After considering the above prayer made on behalf of the respondent, this Court simply observed that at time of leading of rebuttal evidence, the respondent is granted liberty to move the Trial Court for sending the disputed documents for examination by the FSL, Madhuban. No observation is found in the order of this Court dated 25.04.2018 granting permission to the respondent for sending of the disputed documents to the FSL, Madhuban. There is also

no direction by this Court to the Trial Court in this regard.

Reasons are the soul of a judicial order and an order without its soul has no place in the judicial world. Every judicial order must be backed by sound reasons as they ensure that the decision is not a result of whim or fancy of its author and that the same is just. A reasoned order is also in line with the principle that justice should not only be done but also seem to have been done. Also that in the absence of reasons, it would be extremely difficult for the superior Court to ascertain the correctness of the order appealed or petitioned against.

In view of the above, the impugned order being bereft of any reason is set aside and the matter is remitted to the Trial Court with a direction to consider and decide the respondent's application filed by him at the time of leading rebuttal evidence to send the disputed documents for examination by the FSL, Madhuban, by passing a well reasoned speaking order. Since the petitioner's suit is lying pending for the last about 11 years, it is directed that a decision on the respondent's aforesaid application be taken within two weeks from the date of receipt of a certified copy of this order.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

July 18, 2019
Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No