

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

CR-5090-2019 (O&M)

Date of decision: 27.08.2019

Dharambir Kamboj

...Petitioner

Versus

Kuldeep (since deceased) thr. LRs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. D.S. Adlakha, Advocate for the petitioner.

H.S. MADAAN, J.

This revision petition is directed against order dated 04.07.2019, passed by Civil Judge (Jr. Divn.) Karnal, vide which, an application moved by defendant/respondent Dharambir Kamboj for permission to obtain proof of signatures from complaint under Section 138 of Negotiable Instruments Act (for short 'the Act'), bearing No.2211 of 2015 has been declined.

Briefly stated facts of the case are that plaintiff Kuldeep had filed a suit for recovery against Kanta Devi, her son Sanjay Kamboj and husband Dharambir Kamboj, seeking recovery of Rs.5 lacs with interest and costs on the averments that at request of the defendants, the plaintiff had granted a loan of Rs. 5 lacs for their business of Ice Cream. To discharge that liability, defendant No.1 Kanta Devi had issued a cheque No.001291 dated 17.08.2015 from her

firm's account, of which she is sole proprietor in favour of the plaintiff. However, on presentation, the cheque was returned uncashed for the reason of insufficient funds in account of the drawer of the cheque. The plaintiff had filed a complaint under Section 138 of the Act against the defendants but that was dismissed by JMIC, Karnal, observing that it was premature. Therefore, the plaintiff brought a suit for recovery against the defendants. On notice, only defendant No.3 had appeared and filed written statement, contesting the suit whereas, defendant Nos.1 & 2 were proceeded against ex parte. During the course of proceedings, he moved an application for permission to obtain proof of signatures from the complaint under Section 138 of the Act, decided by JMIC, Karnal on 06.08.2016, for the purpose of comparing those with signatures purportedly of Kanta Devi on the cheque in question. The trial Court vide impugned order dismissed the application, observing that the application was not maintainable, since as per version of the plaintiff, the cheque was issued by defendant No.1, who has since been proceeded against ex parte and defendant No.3 cannot examine any forensic expert for the purpose of comparing the alleged signatures of Kanta Devi on the cheque with her admitted signatures, more particularly, when as per judgment dated 06.08.2016, in complaint under Section 138 of the Act, in para No.15 of the judgment, it is clearly mentioned that the accused had not denied or disputed her signatures on the cheque and the complaint had been dismissed on a

technical ground of being premature. As Kanta Devi, alleged signatory had admitted her signatures on the cheque in proceedings under Section 138 of the Act and had opted not to contest the civil suit, therefore, defendant No.3 who was not a signatory of the cheque had no locus standi to get the signatures of other person compared.

I find that the order is well reasoned, does not suffer from any illegality or infirmity, much less apparent on the face of it. The order is certainly not perverse or passed in violation of settled legal provisions. There is no reason to upset the order by exercising revisional jurisdiction. Finding no merit in the revision petition, the same stands dismissed.

27.08.2019

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(H.S. MADAAN)
JUDGE

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