

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

CR-229-2019 (O&M)

Date of decision: 19.09.2022

Dharam Singh alias Leela Ram and another

....Petitioners

Versus

M/s Swami Trading Company and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arvind Bansal, Advocate for the petitioners

Mr. S.K.Aggarwal,
Mr. Ojas Bansal and
Mr. Tejas Bansal, Advocates for respondent no.1

ANIL KSHETARPAL, J (Oral)

The petitioners herein are the defendants in a suit filed for the recovery of Rs.8,29,185/- by the plaintiff (commission agent Firm). While filing the written statement, the defendants have stated that the said amount is not payable, as there is a receipt issued in the token of receipt of the amount. During the pendency of the suit, the defendants have filed an application for directing the plaintiff to give his specimen of hand-writing. The plaintiff through its Accountant admitted signatures on two of the receipts, however, denied the signatures on the third receipt. The trial court dismissed the application on the ground that the defendants cannot be allowed to fish their evidence through the court.

Heard the learned counsel representing the parties and with their able assistance perused the paperbook.

The defendants, while filing the written statement, have already asserted that the plaintiff-Firm on receipt of the said amount,

issued him receipts. No doubt, while filing the written statement, the defendants claimed that the aforesaid receipt is in the hand-writing of Sh.Gopal- the Accountant, however, now the defendants want the partner of the Firm namely Vinod Kumar and his brother Gurpal to give the specimen of the hand-writing. However, such kind of evidence is necessary for the adjudication of the case. It is not in dispute that both are the partners of the Firm. There is a receipt produced by the defendants. Such receipt can be proved only if the partners of the plaintiff-Firm give specimen of their hand-writing to the court. Such an evidence cannot be said to be fishing the evidence. Hence, the order under challenge is set aside by this Court.

Let the aforesaid persons are directed to give their specimen handwriting before the court. If they fail to do so, the court will be entitled to draw an adverse inference against the plaintiffs.

The revision petition stands allowed.

All the pending miscellaneous applications, if any, are also disposed of.

19.09.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE