

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

CR-5263-2018 (O&M)

Date of decision: 20.05.2022

Sombir

....Petitioner

Versus

Diwan Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.Kartikeya, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The petitioner is the plaintiff in a suit for recovery of Rs.6,50,000/- alongwith the agreed rate of interest. When the case was at the stage of rebuttal evidence, the plaintiff sought permission to produce handwriting and fingerprint expert in evidence. Another application for permission to lead additional evidence in order to examine the handwriting and fingerprint expert was also filed by the plaintiff. The court rejected the request for permission to lead rebuttal evidence keeping in view its scope. The court also dismissed the application for additional evidence with the following observations:-

“5. After hearing the rival contentions of learned counsels for the parties, this Court does not find any merits in the contentions put forth on behalf of the applicant / plaintiff .

6. At the very outset , it is pertinent to mention here that the plaintiff has sought a recovery of Rs.6,50,000/ - alongwith interest on the basis of above said documents. Heavy burden is upon the plaintiff to prove the same by leading the cogent evidence. The court itself is not bound to take any expert report with regard to the disputed signatures of the defendant on the aforesaid documents . It is the duty of the plaintiff to prove the same by leading evidence in affirmative, but he failed to prove the same. Hence, the present application stands

dismissed. Nothing stated herein shall be an expression on the merits of this case and everything stated herein is for the purpose of deciding of this application”

The petitioner relies upon the alleged receipt dated 10th March, 2012 and two affidavits dated 30th September 2014 and agreement to sell dated 24th February 2012 to claim the amount. The defendant is stated to have denied his signatures while appearing in evidence.

From the reading of the order, it is evident that the court has not examined the request for grant of opportunity to petitioner to produce additional evidence in a proper manner. On the one hand, the Presiding Judge of the court observed that the court is not bound to take an expert report, whereas, on the other hand, it has observed that it was the duty of the plaintiff to prove the same by leading evidence in affirmative. However, when the petitioner filed an application for permission to lead additional evidence, the court failed to examine the matter in a proper prospective.

Keeping in view aforesaid facts, the order dated 3rd May, 2018 is set aside. The court is requested to re-decide the application for permission to lead evidence. The revision petition stands allowed.

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

20.05.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE