

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.666 of 2019

Date of Decision : 23.11.2022

Jaspal Singh

....Petitioner

VERSUS

M/s Satnam Trading Co. and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sukhdeep Singh, Advocate for
Mr. Parminder Singh, Advocate for the petitioner.

Mr. Munish Behl, Advocate for respondent nos.1, 2, 4 and 5.

None for respondent no.3.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 17.01.2019 whereby application filed by the plaintiff-petitioner for directing the defendant-respondents to produce account books for the period of 2006-07 to 2009-10 as well as for examination of the same by handwriting and fingerprint expert, was dismissed.

The brief facts relevant to the present case are that the plaintiff-petitioner filed a suit for rendition of accounts and recovery of the amount found due against the defendants. Defendant-respondent nos.1, 2, 4 and 5 averred in the written statement that the plaintiff-petitioner used to sign their account books. The plaintiff-petitioner had denied his signatures on the account books in his pleadings as well as in his evidence. A handwriting and fingerprint expert was produced by the defendant-respondent nos.1, 2, 4 and 5 to prove the signatures of the plaintiff-petitioner on the account books.

The plaintiff-petitioner moved a similar application on 09.10.2014 and again

on 27.07.2017. Pursuant to the said applications, the defendant-respondent nos.1, 2, 4 and 5 produced their original books of account for the period of 2006-07 to 2009-10 on 03.08.2017. Yet again for the third time the same application was moved on 07.09.2017. In all these applications the same prayer was made that the defendant-respondent nos.1, 2, 4 and 5 may be directed to produce the original account books for the period of 2006-07 to 2009-10. For the second time, the defendant-respondent nos.1, 2, 4 and 5 produced the original record on 07.09.2017. On both occasions the plaintiff-petitioner failed to bring his handwriting and fingerprint expert to examine the said account books. In the *zimni* order dated 07.09.2017 it was specifically observed that the defendant-respondent nos.1, 2, 4 and 5 had produced the original record but the handwriting and fingerprint expert of the plaintiff-petitioner did not come present. Eventually as in the opinion of the Trial Court the applications were being filed only to delay the trial, the evidence of the plaintiff-petitioner was closed on 07.09.2017. The said order attained finality inasmuch as the plaintiff-petitioner chose not to challenge the same. On 10.01.2019 the present application was moved for the fourth time. A perusal of the application, which has been appended with the petition as Annexure P-5, clearly reveals that the same is totally bereft of any reasoning as to why when the account books were produced on two earlier occasions the handwriting and fingerprint expert was not present to examine the same. It is also apt to note that the said application has been moved at the stage of rebuttal. Further, the *zimni* order dated 07.09.2017 reads as under :

“Previous cost deposited. Receipt placed on record.

PW Jaspal Singh is present and cross-examined. No other PW is present or examined. At this stage, learned counsel for the applicant/plaintiff has moved an application for directing the defendants No.1, 2, 4 and 5 to produce the original account books since the year 2006- 07 to 2009-10, so that the comparison of the signatures of the plaintiff, with the signatures, present on the said bahis could be conducted by the Handwriting and Finger Expert, as the same is necessary. Earlier also the learned counsel for the defendants No.1, 2, 4 and 5 had stated that he will bring the necessary Bahis as and when required. The learned counsel for the aforesaid defendants has stated at bar that prior to this also, the Bahis were brought by the aforesaid defendants, but Expert was not available today also. The learned counsel for the defendants No.1, 2, 4 and 5 has also made a statement recorded separately to the effect that today the Bahis for the year 2006-07 to 2009-10 are available in the Court. However, Expert is not available in the Court for taking photographs etc. for comparison. Accordingly, the application in hand is disposed off in the aforesaid terms that the Handwriting and Finger Expert for

examining the said Bahis is not available in the Court. At the same time, learned counsel for plaintiff has closed the evidence of the plaintiff. Now the case is adjourned to 14.09.2017 for evidence of the defendant No.3 firstly and thereafter evidence of the other defendants at own responsibility.”

It is thus patent that even on 07.09.2017 the handwriting and fingerprint expert was not available for examining the *bahis*. It is not disputed that the stand taken by the defendant-respondent nos.1, 2, 4 and 5 in the written statement was that the original books of account bear the signatures of the plaintiff-petitioner. It was hence incumbent upon the plaintiff-petitioner to have led his evidence in the affirmative.

Learned counsel for the plaintiff-petitioner has contended that the onus to prove that the account stood settled between the parties was upon the defendant-respondent nos.1, 2, 4 and 5 and hence, the plaintiff-petitioner would have a right to lead evidence in rebuttal. It is however candidly admitted by learned counsel for the plaintiff-petitioner that no right to lead evidence in rebuttal was reserved by the plaintiff-petitioner when his evidence was closed by order on 07.09.2017.

In view of the above and keeping in view the conduct of the plaintiff-petitioner, who has filed multiple applications for production of the original books of account for the period of 2006-07 to 2009-10 and despite the same being produced by the defendant-respondent nos.1, 2, 4 and 5 on two occasions, chose not to get them examined by the handwriting and fingerprint expert, it is apparent that he has filed the present application only

to delay the proceedings. The present application is nothing but an abuse of the process of law.

This Court finds no error of law or jurisdiction in the impugned order passed by the Trial Court. The present revision petition has no merit and is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**(ALKA SARIN)
JUDGE**

**23.11.2022
jk**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO