

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
233 **CR-1803-2018 (O&M)**
Date of decision: 19.04.2023

Surekha Mittal

...Petitioner(s)

Vs.

Raj Kumar

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Nancy Vashistha, Advocate for
Mr. Namit Khurana, Advocate
for the petitioner.

Mr. Sherry K. Singla, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the petitioner/plaintiff seeking setting aside of order dated 05.03.2018 (Annexure P6) passed by learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri whereby application filed by the petitioner/plaintiff for permission to examine handwriting expert by way of additional evidence to prove report, has been dismissed.

2. Brief facts of the case are that the petitioner filed a Civil Suit for recovery of Rs.11,76,833/-. It was the pleaded case of the petitioner/plaintiff that respondent/defendant had taken the premises in question, on rent from the petitioner at a monthly rent of Rs.1,15,000/- vide agreement/rent note dated 13.08.2009 w.e.f. 07.09.2009 to 06.09.2012 for a period of three years and paid an amount of Rs.5,00,000/- to the petitioner as advance rent. It was also stated to be settled between the parties that in case

respondent/defendant breached the contract within a year in that eventuality, respondent will have to give four month advance notice. The agreement/rent note was duly reduced into writing between the parties. The respondent put his signatures over the same after reading over and accepting the contents of the same as correct in the presence of witnesses. Possession of the premises was handed over to the respondent on 07.09.2009 and thereafter, respondent started running the industry at the spot. Thereafter, the petitioner demanded due rent of her premises from the respondent but he avoided the matter on one pretext or the other.

3. The respondent filed written statement (Annexure P2) to the said Civil Suit wherein the respondent denied relationship of landlord-tenant between the parties and stated that the said purported agreement dated 13.08.2009 was a forged and fabricated document.

4. As the respondent had denied the rent agreement between the parties, the petitioner filed an application seeking direction to the respondent to give his handwriting and specimen signatures for comparison with the signatures and writing on the agreement/rent note dated 13.08.2009. Vide order dated 04.07.2017 (Annexure P3), learned trial Court allowed the above said application filed by the petitioner. Thereafter, the petitioner filed present application for permission to examine handwriting expert by way of additional evidence to prove his report. It is this application which has been dismissed by the learned trial Court. Hence, present Revision Petition.

5. Learned counsel for the petitioner inter alia submits:

i) that report of the handwriting expert Sh.Sumit Arora was produced before the learned trial Court. However, the said report was placed before the learned trial Court after closing of evidence of the petitioner/plaintiff and accordingly, the petitioner could not have sought to examine the expert prior to filing of the said report;

ii) that the handwriting report of the expert was not in existence and possession of the petitioner at the time of closing of evidence by the petitioner and therefore, expert could not have been examined in the affirmative evidence of the petitioner despite due diligence;

iii) that examination of the expert is vital to the case and therefore, an opportunity be granted to the petitioner to lead evidence of handwriting expert to prove the report submitted by him.

6. In response, it is submitted by learned counsel for the respondent/defendant:

i) that respondent/defendant has closed his evidence, and case is at stage of evidence in rebuttal, if any, and arguments. Accordingly, present application filed by the petitioner for leading additional evidence at this belated stage is not maintainable and petitioner can only lead evidence in rebuttal. Admittedly, petitioner has not reserved his right to lead evidence in rebuttal;

ii) that vide order dated 04.07.2017, the petitioner had been allowed to examine the handwriting expert. However, the

petitioner chose not to do so and can therefore, now not be allowed to fill lacunae in her case.

7. No other argument is raised on behalf of the parties.

8. I have heard learned counsel for the parties.

9. In the present case, the record undisputedly, bears out that the respondent/defendant had filed his written statement wherein he had taken the categorical plea that the alleged signature of the defendant as borne on the alleged agreement dated 13.08.2009 is forged. However, thereafter the petitioner had moved an application for comparison of the signatures of the respondent only on 03.03.2017 which was allowed by the learned trial Court vide order dated 04.07.2017.

10. Vide order dated 04.07.2017 (Annexure P3), learned trial Court while allowing the petitioner's application directed as follows:-

*"Keeping in view the judgment of the Hon'ble Punjab and Haryana High Court in **Pawan Kumar & Another Vs. Vijay Kumar & Others**, I am of the considered view that the evidence of the handwriting expert sought to be produced by plaintiff is material for proper adjudication in the present case. Thus, the application is allowed. Now the case adjourned to 13/07/2017 and defendant is directed to give his specimen signature and handwriting for comparison by the expert."*

11. Admittedly, in pursuance to the above said order, the petitioner did not lead evidence of the handwriting expert as permitted. Admittedly too, now the defendant's evidence has also been closed.

12. Furthermore, onus to prove signature of the respondent on the alleged agreement was upon the petitioner. In my view, from the above facts it is clear that the petitioner was granted ample opportunity to lead evidence in support of her case. The very fact that the petitioner chose not to lead expert evidence even after being allowed to do so vide order dated 04.07.2017 shows that due diligence was not exercised on her part. In my view, the petitioner cannot be allowed to do so at this belated stage when admittedly, defendant's evidence already stands closed. Moreover, the trial is now at the stage of rebuttal evidence and as per judgment of this Court in **Smt. Nachhatar Kaur Vs. Harjinder Pal, CR No.3781 of 2015** the petitioner cannot be allowed to lead additional evidence at the stage of rebuttal. Relevant part of said judgment is reproduced hereinbelow:

"In view of above, plaintiff, after having availed sufficient opportunity to lead the evidence and closing the evidence in affirmative, cannot be allowed to cross-examine the Handwriting & Finger Prints Expert. A party, who has to prove the issue, cannot be allowed to lead evidence in rebuttal. This option either to examine or to cross-examine the Handwriting Expert was available with the plaintiff, at the time when it was leading his evidence in affirmative, cannot be allowed to be led at the stage of rebuttal by way of additional evidence. The Court below has completely ignored this legal proposition while passing the order under challenge."

13. Even no case law to the contrary has been cited by learned counsel for the petitioner.

14. In view of above discussion, present Revision Petition accordingly, stands **dismissed**.

15. Pending application(s) if any also stand(s) disposed of.

19.04.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No