

[113] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.533 of 2023

Date of Decision :27.01.2023

Mahesh Kumar

...Petitioner

versus

Naresh Kumar Goyal

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Gulshan Nandwani, Advocate for the petitioner.

B.S. Walia, J. (Oral)

[1] Prayer in the instant petition is for setting aside order (Annexure P-4) dated 22.11.2022 passed by the learned Addl. Civil Judge (Senior Division), Rewari, whereby the application for taking specimen writing of the defendant namely Manoj Kumar filed by the petitioner was dismissed.

[2] At the outset, it needs noticing that Manoj Kumar is not a defendant but is the son of the defendant-Naresh Kumar.

[3] A perusal of order (Annexure P-4) further reveals that an application was moved by the petitioner for taking specimen handwriting of the defendant-Manoj Kumar, as the defendant Naresh Kumar had executed *tahrir*/document (Ex. PW1/B) but the body writing of the said *tahrir*/document was in the handwriting of defendant's son Manoj Kumar and that the petitioner wanted to produce handwriting and fingerprint expert in his evidence, therefore, the prayer was made that defendant Manoj Kumar be directed to produce the specimen writing so that the same could be verified.

[4] The learned trial Court by taking into account that in paragraph No.3 of the plaint, the petitioner-plaintiff had taken a specific plea of defendant having executed writing regarding loan on stamp paper in respect of which the suit was filed on 06.07.2017 whereafter issues were framed and case was fixed for plaintiff-appellant evidence, in which, he had examined himself as PW-1, besides four other witnesses had been examined, held that in the circumstances, the application was not maintainable, as the same had been filed merely to fill up the *lacuna* in the applicant-plaintiff case which had occurred at the time of cross-examination of the petitioner-plaintiff and the Court could not play the role of an assistant to either of the parties to help them procure evidence more so when Manoj Kumar was not a party to the suit.

[5] Learned counsel relies upon a decision of '**M/s Rajender Kumar Dalip Kumar Jain** versus **Subhash Chander**', 2006(4) RCR (Civil) 731 filed against the order passed by the learned Addl. Civil Judge (Senior Division), Sirsa on 11.08.2006 vide which the application moved by the respondent for taking specimen handwriting of plaintiff's witness was allowed. On behalf of the petitioner in the said case, it was contended that once the evidence of the plaintiff was being led, the defendant could not be allowed to produce handwriting expert as an opportunity could be availed only when the defendants were leading their evidence. The said contention was rejected and the order passed by the learned trial Court on an application moved by the defendant for taking specimen handwriting of plaintiff witness was upheld. The same is distinguishable, as in the instant case, perusal of paragraph No.3 of the

plaint (Annexure P-1) reveals the averment that defendant-Naresh had executed writing in presence of witness-Madan Lal, whereas a perusal of application (Annexure P-2), reveals that the petitioner made out a totally different case than what was pleaded in the plaint, namely of the defendant's son Manoj Kumar having written the *tahrir*/document. It is settled law that no amount of evidence can be led in respect of a fact which is not pleaded and further that a Court cannot be used as a vehicle to procure evidence on behalf of either of the parties nor could the application be allowed to enable the plaintiff to fill up the *lacuna* which had occurred at the time of cross-examination of plaintiff-petitioner/Mahesh Kumar.

[6] I have considered the submissions of learned counsel.

[7] Admittedly, Manoj Kumar, whose handwriting sample had been sought by moving application is not the defendant in the civil suit. A perusal of paragraph No.3 of the plaint (Annexure P-1) reveals the averment that defendant-Naresh had executed writing in presence of witness-Madan Lal, whereas a perusal of application (Annexure P-2), reveals that the petitioner made out a totally different case than what was pleaded in the plaint, namely of the defendant's son Manoj Kumar having written the *tahrir*/document.

[8] It is settled law that no amount of evidence can be led in respect of a fact which is not pleaded and further that a Court cannot be used as a vehicle to procure evidence on behalf of either of the parties. The learned trial Court rightly held so as also that the application had been filed to fill up the *lacuna* which had occurred at the time of cross-

examination of plaintiff-petitioner/Mahesh Kumar. Besides, no application is stated to have been filed for amendment of the plaint to the above effect, namely of the writing of the *tahrir*/document having been made by the defendant's son-Manoj Kumar.

[9] Reference may be made to a decision of Hon'ble the Supreme Court in '**Biraji @ Brijraji and another**versus**Surya Pratap and others**', Civil Appeal Nos. 4883-4884 of 2017, decided on 03.11.2020. Relevant extract of the same is reproduced as under:-

“7. Having heard the learned counsels on both sides, we have perused the impugned orders and other material placed on record. The suit in Original Suit No. 107/2010 is filed for cancellation of registered adoption deed and for consequential injunction orders. In the adoption deed itself, the ceremony which had taken place on 14.11.2001 was mentioned, hence it was within the knowledge of the appellants-plaintiffs even on the date of filing of the suit. In the absence of any pleading in the suit filed by the appellants, at belated stage, after evidence is closed, the appellants have filed the application to summon the record relating to leave/service of Ramesh Chander Singh on 14.11.2001 from the Rajput Regiment Centre Fatehgarh. It is fairly well settled that in absence of pleading, any amount of evidence will not help the party. When the adoption ceremony, which had taken place on 14.11.2001, is mentioned in the registered adoption deed, which was questioned in the suit, there is absolutely no reason for not raising specific plea in the suit and to file application at belated stage to summon the record to prove that the second respondent-Ramesh Chander Singh was on duty as on 14.11.2001. There was an order from the High Court for expeditious disposal of the suit and the application which was filed belatedly is rightly dismissed by the

Trial Court and confirmed by the Revisional Court and High Court. It is also pertinent to mention, subsequent to dismissal of the application in Application No. 97-C, for summoning the leave/service record of defendant No.2, from his place of working that is Rajput Regiment Centre Fatehgarh, by the Trial Court on the ground that there was no such pleading in the suit, the appellants herein have filed application for amendment of the plaint in an Application No. 103-A, which was dismissed by the Trial Court and said order was confirmed by the District Judge, Gazipur in Civil Revision No. 58 of 2013 by order dated 03.05.2013. The said order has become final.

9. *In our view the reasons recorded in the orders passed by the Trial Court, as confirmed by the Revisional Court and High Court are valid and are in accordance with the settled principles of law. It is clear from the conduct of the appellants, that in spite of directions from the High Court, for expeditious disposal of the suit, appellants-plaintiffs were trying to protract the litigation.”*

[10] The facts in the instant case were to the knowledge of the petitioner since the beginning. No application was made for amendment of the plaint. In paragraph No.3 of the plaint, the petitioner-plaintiff had taken a specific plea of the defendant having executed writing regarding loan on stamp paper in respect of which the suit was filed on 06.07.2017 whereafter issues were framed and case fixed for plaintiff-applicants evidence, in which, petitioner plaintiff examined himself as PW-1, besides four other witnesses. In the circumstances, the application was not maintainable, as the same was filed merely to fill up the *lacuna* in the

examination. Besides, Court proceedings are not for assisting either of the parties to help them procure evidence. Accordingly finding no merit, the instant petition is dismissed in limine.

27.01.2023

'Rajneesh'

(B.S. Walia)

Judge

Whether speaking/ reasoned

:

Yes/No

Whether reportable

:

Yes/No