

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

CR 1898/2020 (O&M)

Date of decision: 16.03.2023.

Phumman Singh

.....Petitioner

Vs.

Babu Singh

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Bhriugu Dutt Sharma, Advocate for the petitioner.
Mr. Arjun Kundra, Advocate for the respondent.

Nidhi Gupta, J.

Present revision petition has been filed by the plaintiff seeking setting aside of order dated 2.3.2020 (Annexure P-7) passed in Civil Suit No.1369 of 2015 titled as 'Phumman Singh v Babu Singh' whereby Id. Civil Judge (Senior Division), Jalandhar has dismissed the application filed by the petitioner for examining handwriting expert for comparison of signatures of the respondent-defendant appearing on the agreement to sell dated 18.4.2013 (Exhibit P-2), with the admitted signatures of the respondent.

Brief facts of the case are that petitioner filed a civil suit for possession by way of specific performance of the agreement to sell dated 18.4.2013 in respect of suit property as described in the head note of the plaint (Annexure P-1). Upon notice, respondent defendant appeared and filed written statement (Annexure P-2) wherein various pleas were taken. Issues were framed vide order dated 16.11.2015 (Annexure P-3) including issue no.5,

which is reproduced hereinbelow:-

“5. Whether the agreement to sell in question is forged and fabricated document? OPD”.

Ld. Counsel for the petitioner submits that in the written statement, defendant-respondent has not denied his signatures affixed on the agreement to sell in question Ex. P-2. It is submitted that though the respondent took the plea that the petitioner had taken the signatures of the respondent on blank papers, which were later on converted into agreement to sell, however, the signatures of the respondent itself, were admitted by the respondent in the written statement. It is further submitted that as the respondent had not denied his signatures on the agreement in question and only took the plea that respondent was made to sign blank papers, accordingly petitioner did not examine any Expert while leading his evidence in affirmative. It is submitted that the petitioner examined himself as PW1 and also examined one Ramji Dass and Sri Niwas who were marginal witnesses to the agreement to sell, as PW2 and PW3 respectively. It is submitted that all the three witnesses were cross-examined on the line of defence taken in the written statement that the agreement to sell had been allegedly prepared on blank stamp papers obtained by the petitioner and his wife, which were signed by the respondent-defendant for getting the visa for sending the son of the defendant to USA. It is submitted that accordingly, the respondent had never denied his signatures on the agreement to sell but was defending the suit by admitting his signatures and alleging that his signatures were obtained by giving wrong impression that signatures were required for completing formalities to obtain Visa for sending the son of the defendant to USA. Learned counsel submits that accordingly petitioner closed his evidence in affirmative whereafter, the respondent examined his wife Kamlesh Kaur as DW3, his son Mandeep Singh as DW7 and himself appeared as DW4 and also examined other witnesses.

Learned counsel states that even DW3 and DW7 deposed in accordance with the written statement and reiterated the stand taken by the respondent. In this regard learned counsel refers to cross examination of the petitioner at the hands of counsel for the respondent which is reproduced hereinbelow:-

“PW-1 Phumman Singh

It is wrong to suggest that I along with my wife obtained signatures of defendant on blank papers for VISA completion formalities. It is wrong to suggest that signatures were obtained for sending Amarjit abroad. Counsel for the defendant who is cross-examining was also present at time of agreement and he got prepared affidavit. It is wrong to suggest that blank papers were converted in agreement to sell. It is wrong to suggest that any talk took place for sending Amarjit abroad. We never sent him abroad....."

PW2 Ramji Dass

".... I do not know that any talks were held with Phumman Singh and his wife for sending Amarajit Singh son of Babu Singh to USA. I do not know that they had mutually agreed for a sum of Rs. 25 lakhs. I do not know that Amarjit Singh was sent to Mexico and he remained stranded there. I do not know that Amarjit Singh was kept stranded at Mexico by Phumman Singh for 6 months. I do not know that Babu Singh sent his son to USA through another agent. I do not know that before sending Amarjit Singh abroad, Phumman Singh had obtained signatures of Phumman Singh on blank papers by saying that these papers are to presented in USA Embassy. I do not know that Phumman Singh and his wife had obtained signatures on some blank stamp papers which have been converted by him into the agreement to sell. It is incorrect that neither any agreement to sell was entered in my presence

nor Phumman Singh had given any money to Babu Singh and further that no person had signed in my presence on the abovesaid agreement to sell....."

Learned counsel for the petitioner submits that however, respondent/defendant/DW4 during his cross examination on 19.9.2019 for the first time stated that *"I have seen Exhibit P-2, which do not bear my signatures and the signatures at Point-A on all the pages of Exhibit P-2 are not of mine."* It is submitted by the Id. Counsel for the petitioner that it is only on 19.9.2019 during his cross-examination, for the first time, that the respondent had denied his signatures on the agreement to sell Ex.P2. Accordingly, petitioner moved an application dated 23.2.2020 (Annexure P5) to get compared the signatures of the respondent on the agreement to sell with his admitted signatures and therefore, sought appointment of Handwriting Expert to lead evidence in rebuttal. The respondent filed reply dated 27.2.2020 (Annexure P6) to the said application wherein the respondent denied his signatures on the agreement (Ex.P2) and stated that his signatures have been forged and fabricated by the petitioner. It is submitted by the learned counsel for the petitioner that Id. Trial Court has dismissed the abovesaid application without appreciating that respondent in his written statement had admitted his signatures and it was only now that he was taking a contrary stance in his deposition. It is submitted that it is for this reason that the petitioner was constrained to file the present application.

It is further submitted that the Id. Trial Court is in material error in incorrectly recording that no such issue was framed, which required the petitioner to lead evidence in rebuttal. It is submitted that learned Trial Court has failed to appreciate that the onus to prove Issue no.5 i.e. "5. Whether the agreement to sell in question is forged and fabricated document? OPD", was

placed upon respondent and therefore, petitioner has every right to lead further evidence in rebuttal to the evidence led by the respondent. Ld. Counsel further submits that Id. Trial Court has failed to appreciate that petitioner while leading evidence in affirmative had no reason or cause to examine any Handwriting Expert as respondent had at no stage denied his signatures on the agreement to sell rather had admitted his handwriting/signatures. It is submitted that it is only when the respondent for the first time denied his signatures on the agreement to sell on 19.9.2019 that the occasion or cause arose to the petitioner which required leading evidence in rebuttal.

It is submitted that no prejudice will be caused to the respondent if the present application is allowed as it will only help the Trial Court to effectively adjudicate upon the dispute and decide the controversy between the parties in a judicious manner after examining the entire evidence. It is further submitted that the Id. Trial Court was in error in observing that petitioner has not disclosed as to with which admitted signatures of respondent will the petitioner compare the signatures as affixed on the agreement to sell. It is stated that the easiest available admitted signatures of the respondent are on the written statement, and therefore, the said reason cited by the Id. Trial Court for rejecting the application of the petitioner is spurious. Lastly, learned counsel, in support of his arguments relies upon judgments rendered by this Court in '**Karanjeet Singh v Amarpreet Singh**', Law Finder Doc Id # **1087575** and '**Monika alias Avneet Monika v Harpreet Singh**', Law Finder Doc Id # **632685**.

Per contra, it is submitted by the Id. Counsel for the respondent that perusal of the written statement filed by the respondent shows that the respondent had clearly stated therein that "*plaint being result of forgery,*

mischievous and conversion of documents, is liable to be returned and dismissed against the answering defendant with special costs.”. It is submitted that therefore, respondent had never admitted his signatures on the disputed agreement to sell. It is submitted that the defence as taken by the respondent was already in the knowledge of the petitioner and therefore, the petitioner should have examined Handwriting Expert during his examination in chief/evidence in affirmative. It is submitted that the signatures of the respondent had been forged and fabricated and that the respondent never signed the agreement to sell dated 18.4.2013 and neither thumb marked the same. It is further submitted that the Id. Trial Court has correctly concluded that the petitioner had led ample evidence in affirmative in support of his claim and that the dispute can be well decided on the basis of already adduced evidence. It is reiterated that the petitioner had foreknowledge of the stand taken by the respondent as is evident from the written statement and therefore, petitioner ought to have examined Handwriting Expert at the previous stage and could not be permitted to do so during evidence in rebuttal. In support, Id. Counsel relies upon judgments of this Court in **Amarjit Singh v Pishora Singh and others**, Law Finder Doc Id#1532364 and **M/s Satyam Steel v Smt. Sarla and another**, Law Finder Doc Id# 826482. It is submitted that in **M/s Satyam Steel** (supra) this Court had held that “*fact of denial of signatures was in knowledge of plaintiff at the time of leading evidence in affirmative and hence additional evidence was not allowed to be led to contradict evidence of defendant*”. Further it is submitted by the Id. Counsel for the respondent that in the case of **Amarjit Singh** (supra) it had been held that plaintiff therein, having noticed the plea of the defendants in the written statement and having omitted to lead evidence in affirmative, was not allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself.

No other argument has been made on behalf of the parties.

Heard Id. Counsel for the parties.

Perusal of the record, in particular the written statement Annexure P-2 filed by the respondent-defendant shows that in para 7 of the preliminary submissions of the said written statement, it is stated as under:-

“.....The defendant namely Phumman Singh (sic Babu Singh) was made to sign some blank stamp papers on the pretext that the same were to be submitted to USA Embassy to obtain Visa and complete other formalities for sending above named Amarjit Singh to USA. The defendant unsuspectingly signed the blank stamp papers along with other blank papers sanguinely believing that the blank stamp papers signed by the defendant and the other papers were in fact required by the plaintiff and his wife Baby to send the above named Amarjit Singh son of defendant to the United State of America. It was further affirmed by Baby wife of Phumman Singh that the blank stamp papers so obtained will be used only for Visa purpose of Amarjit Singh”.

It has further been stated by the respondent in paras 1 and 2 of the preliminary objections of the said written statement as follows:-

"1. That the present suit as filed by the plaintiff is a result of forgery, mischief and conversion of documents. The defendant has not agreed to sell the house situated in Shiv Enclave, Deep Nagar, Village Soffi Pind, Jalandhar Cantt., Jalandhar to the plaintiff. The plaint being result of forgery, mischief and conversion of documents is liable to be returned and dismissed against the answering defendant with special costs.

2. That the plaintiff and his wife are indulging in illegal practices and thereby the plaintiff along with his wife

namely Baby have been able to convert the documents of the answering defendant and thereby filed the present suit. This practice of the plaintiff is against the public policy and hence the plaint is liable to be dismissed".

From the above pleadings it is clear that the stand of the respondent was that the documents signed by him have been misused by the petitioner as the petitioner had converted the said documents into an agreement to sell. It is clear from the above said pleadings that the respondent had not denied his signatures on the agreement to sell/blank papers.

Ld. Trial Court has dismissed the petitioner's application for leading evidence in rebuttal on the following grounds:-

"6. Heard. Firstly, this court observes that, while filing written-statement, there has been no specifically denial by defendant qua alleged forgery of his signature on agreement to sell dated 18.04.2013. However, at the same time, while leading evidence in affirmative, plaintiff did not opt to examine any evidence of expert to prove said disputed signatures of defendant on agreement to sell in dispute. Moreover, no such issue is lying framed, in whose rebuttal, plaintiff now intends to lead expert evidence at the stage of rebuttal evidence. So, this court hereby observes that, application seeking permission to examine handwriting expert is in the form of adducing further evidence of plaintiff (not in the form of leading additional evidence) which is not permissible under law, at this stage of proceeding.

7. Moreover, as per case law being relied upon by plaintiff himself Karanjeet Singh's case (supra); permission to examine expert during rebuttal evidence was granted while leading additional evidence and not in rebuttal evidence. Therefore, this court concludes that, present application is not legally maintainable.

8. Secondly, this court observes that, plaintiff intends to compare disputed signature of defendant on agreement to sell dated 18.04.2013 with his specimen admitted signature, but nothing has been disclosed as what has been admitted signature with whom said comparison is required. So, application filed to this effect is also defective.

9. Thirdly, this court observes that, otherwise, also plaintiff has already led ample evidence in affirmative in support of his claim in the form of testimony of PW1 to PW3 & thereby, matter in controversy i.e. dispute regarding bearing of signature of defendant on agreement to sell dated 18.04.2013 can well be decided by this court on the basis of already lying adduced evidence on record".

Further the deposition of the respondent as DW4 has been placed before this Court as Annexure P-4. Cross examination of respondent-DW4 as conducted on 19.9.2019 is reproduced hereinbelow: -

".....I myself did not file any complaint against plaintiff till today to the police authorities or before any department with respect to the allegation in my affidavit. Volunteer my wife had done. I can identify my signatures. I have seen the written-statement dt. 09.07.2015, which bears my signatures. I have seen Ex. P2, which do not bear my signatures and the signatures at point A on all the pages of Ex. P2 are not of mine. I do not file any complaint regarding the alleged forgery of my signatures at point A on Ex. P2 to police at any point of time. Volunteer I have not any knowledge about the same. No notice was issued to me by the plaintiff for executing the sale deed with respect to agreement Ex. P2.....".

Perusal of the above facts show that the respondent had clearly not denied his signatures on the agreement to sell/blank papers in the written

statement Annexure P-2 filed by him. The categoric assertion of the respondent in para 7 of the preliminary submissions in the written statement is to the effect that *“The defendant unsuspectingly signed the blank papers along with other blank papers sanguinely believing that the blank stamp papers signed by the defendant and the other papers were in fact required by the plaintiff and his wife Baby to send the above named Amarjit Singh son of defendant to United State of America.”*

Even the ld. Trial Court has rightly noted this fact in the impugned order as follows: *“Firstly, this court observes that, while filing written-statement, there has been no specifically denial by defendant qua alleged forgery of his signature on agreement to sell dated 18.04.2013.”* Admittedly, it is only in the evidence that the respondent for the first time denied his signatures on Ex.P2. Accordingly, I do not find any merit in the reasoning assigned by the ld. Trial Court that the petitioner should have examined evidence of Expert while leading evidence in affirmative. In my view, no such occasion arose for the petitioner to lead Expert evidence in his evidence in affirmative as the respondent had admitted his signatures on the document in question.

Further the second reason assigned by the Trial Court that the petitioner has not disclosed as to with which admitted signatures of the respondent will the petitioner get the disputed signatures compared, is misplaced as admittedly, the respondent has signed written statement before the Trial Court and it is open to the petitioner to get the disputed signatures of respondent compared with his admitted signatures on the written statement.

Learned Trial Court is further in error in holding that no such issue is lying framed in whose rebuttal plaintiff now intends to lead Expert

evidence. In my view, the above reasoning of the Trial Court is patently erroneous in view of the Issue no.5, already reproduced hereinabove. It is clear that the reasoning of the Id. Trial Court is ipso facto incorrect as onus probandi of above said Issue no.5 is on the defendant and therefore, the petitioner has every right to lead further evidence in rebuttal to the evidence led by the respondent/defendant. This is the established position in law that if onus to prove an issue is on the defendant, then plaintiff has the right to lead evidence in rebuttal.

Accordingly, in my view, as the defendant/respondent candidly admitted his signatures on the disputed documents in the written statement filed by him, and had also admitted his signatures while cross-examining the witnesses of the petitioner by stating that the signatures of the respondent were obtained by the petitioner and his wife on blank stamp papers on a false pretext, the petitioner had no reason, cause or occasion to lead evidence in affirmative in this regard. It is only when the respondent, during cross-examination on 19.9.2019 for the first time denied his signatures, that the petitioner was left with no alternative but to examine Handwriting Expert in order to prove the disputed signatures. Further, Respondent cannot derive any benefit from the judgments relied upon by him as in the said case evidence in rebuttal was sought to be led in a case where onus to prove the issue was on the plaintiff. In the present case it is not so. In fact, in my view evidence so led would be helpful to the Trial Court in pronouncing the judgment and adjudicating upon the matter.

Accordingly, present revision petition is allowed; the impugned order dated 2.3.2020 (Annexure P-7) passed by the Civil Judge (Senior Division), Jalandhar is set aside, and the application filed by the petitioner for

examining Handwriting Expert for comparison of signatures of the respondent on the agreement to sell dated 18.4.2013 with his admitted signatures is allowed.

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

(Nidhi Gupta)
Judge

16.03.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No