

CRM-M-36601-2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 21.09.2023

Sonu and another

....Petitioners

V/s

M.L. Aggarwal Hosiery Private Ltd.

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. D.S. Randhawa, Advocate for the petitioners.

Mr. Manuj Nagrath, Advocate for the respondent.

ARUN MONGA, J. (Oral)

Present petition has been filed seeking quashing of order dated 16.07.2018 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Ludhiana whereby application moved by petitioners in complaint No.COMA/9680/2016 dated 19.09.2016, under Section 138 of the Negotiable Instruments Act, 1881, titled as M.L. Aggarwal Hosiery Pvt. Ltd. vs. Sonu, seeking permission to allow handwriting expert to give opinion on disputed handwriting on cheque and further permission to allow the handwriting expert to appear as defence witness, was dismissed.

2. Succinctly facts first, as pleaded in the instant petition.

2.1 Initially, respondent/complainant filed a complaint under Section 138 of Negotiable Instruments Act against accused-petitioners. It is alleged therein that petitioners were having business dealings with respondent. During the course of such transactions in the year 2012, petitioners issued a cheque bearing No.808597 amounting to Rs.29,70,000/- drawn on Punjab National Bank, Branch Preet Vihar, Delhi in discharge of their legal liability. Upon presentation, the same was dishonoured. After issuance of legal notice etc., a complaint was filed. After notice, accused-petitioner appeared and categorically stated that the aforesaid

cheque was given as security in the year 2012 and the respondent had misused the said cheque by putting the date as 06.08.2014. However, complainant-respondent alleged that the cheque was filled up by petitioner No.1 in his own handwriting. Same was given on 06.08.2014 to him, which fact is completely denied and disputed by accused-petitioners. Mr. Pawan Aggarwal, Director of the respondent-Company appeared as CW-2 in the witness box and in his cross-examination admitted the factum that he had received the cheque filled by accused at his shop. He denied that cheque does not bear handwriting of accused-petitioners. After the statement of petitioner No.1 was recorded under Section 313 Cr.P.C., petitioners moved an application before the Court below seeking permission to allow, Handwriting expert to give opinion on the disputed handwriting on cheque and also sought permission to allow handwriting expert to appear as defence witness. However, the Court below dismissed the application vide impugned order dated 16.07.2018 on the ground that the same has been moved in order to delay the trial.

3. Learned counsel for the petitioners submits that examination of handwriting expert is very much necessary for fair adjudication of the case. He further submits that version of complainant-respondent regarding the manner and issuance of cheque is false, fabricated and concocted and thus, impugned order deserves to be set-aside. Moreover, no prejudice would be caused to complainant-respondent by examination of handwriting expert.

4. Learned counsel for the respondent submits that application has been moved by petitioners in order to delay the trial. Moreover, petitioners have failed to deny the signatures on the cheque in question which was issued by them in discharge of their legal liability.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

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6. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by leading evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. In the instant case, prejudice would indeed be caused to petitioners herein, unless afforded an effective opportunity to examine handwriting expert and further allow the handwriting expert to appear as defence witness which in fact seems necessary for a just decision of the case. Trial in the matter may lead to unjust consequences in the absence of an opportunity to petitioners for allowing handwriting expert as a defence witness.

7. For the foregoing reasons, in order to meet the ends of justice and to arrive at a just decision of the case, I deem it appropriate to allow petitioners to get the disputed document examined from handwriting expert and one effective opportunity to produce and examine the handwriting expert as defence witness. Accordingly, present petition is allowed and the impugned order dated 16.07.2018 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Ludhiana is set aside. Learned Court below is directed to give one effective opportunity to petitioners to allow the petitioners' handwriting expert to examine the disputed document and to further grant one effective opportunity for production and examination of handwriting expert as defence witness.

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

(ARUN MONGA)
JUDGE

September 21, 2023

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No