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

CR-2251-2022 (O&M)

Date of Decision: 10.05.2023

Gopal Singh

....Petitioner

Versus

Inderjit

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Om Malhan, Advocate
for Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Dixit Gag, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside the impugned order dated 18.04.2022 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Amloh, whereby application filed by respondent/plaintiff for directing petitioner/defendant to give his handwriting, signatures and thumb impressions in Court, was allowed.

2. Succinct facts first, as pleaded in the petition herein.

2.1. Respondent filed a suit under Specific Relief Act for permanent injunction restraining petitioner/defendant, his agents or servants from alienating, selling, transferring, mortgaging the suit property along with all rights appurtenant thereto to any other person except plaintiff/respondent,

illegally and forcibly. Further, relief for possession by way of specific performance of agreement to sell dated 10.09.2014, in respect of suit property and in alternative, for recovery of Rs.70 Lakh, was also sought.

2.2. Suit was contested by petitioner/defendant by filing detailed written statement (Annexure P-3). Issues were framed. Thereafter, plaintiff's evidence started, in course thereof, plaintiff/respondent moved an application (Annexure P-4) seeking handwriting sample, signatures and thumb impressions of petitioner/defendant.

2.3. Application was contested by petitioner by filing detailed reply (Annexure P-5). Vide impugned order (Annexure P-1), Ld. Trial Court allowed the application by observing that Court has jurisdiction to direct a party to give his signature or handwriting for the purpose of enabling the Court to compare them with the disputed writing or for sending it to handwriting expert.

3. Learned counsel appearing for petitioner/defendant would *inter alia* argue that plaintiff has to prove his own case. There is no provision to direct defendant to give any such specimen of handwriting. He would further argue that it is not a case where there are two different expert reports by parties in their respective evidence. Therefore, merely on the asking of plaintiff, it does not make out a ground to give directions to defendant to give his signatures or handwriting for the purpose of enabling the Court to compare them. He further contends that Court cannot compel a person to become a witness against himself.

4. Learned counsel appearing for respondent/plaintiff, on the other hand, opposes the instant petition. He argues that since defendant is denying his signatures, thumb impression as well as his handwriting on the original

agreement dated 10.09.2014, it is in the interest of justice if his signatures/thumb impressions and handwriting are compared by Ld. Trial Court or in the alternative by handwriting expert. Learned Trial Court has committed no error in allowing the application filed by respondent/plaintiff, is the contention.

5. I have heard competing arguments of learned counsel for the parties and have perused the case file.

6. At this stage, reference to Section 45 of the Indian Evidence Act, 1872 (for brevity, 'Act of 1872') would be necessary and the same is reproduced as under:

“45. Opinions of experts: When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.”

7. It would also be important to refer to provisions of Section 73 of the Act of 1872, which for ready reference is reproduced as below:

“73. Comparison of signature, writing or seal with others admitted or proved: In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.”

8. There is no dispute about the proposition of law that Court can always call upon a party to give his specimen handwriting and signatures for the purpose of comparison with the disputed signatures and handwriting or in the alternative to get it compared from Hand Writing Expert, so as to

reach to a conclusion for adjudication of the matter in controversy. However, in the instant case, when the sale agreement dated 10.09.2014 is disputed as forged by petitioner/defendant, it is for respondent/plaintiff who vouches for the genuineness of the document to take steps to send the document for getting the opinion of the handwriting expert to prove his case. Application dated 02.03.2022 (Annexure P-4) for directing petitioner/defendant to give his handwriting, signatures and thumb impression was filed by respondent/plaintiff belatedly and lacks *bona fide*, given that suit was filed in the year 2015 and defendant had filed written statement (Annexure P-3) wherein in para 2, he specifically alleged that the agreement to sell in question is a forged document and is without any sale consideration. When the document, namely, the agreement to sell dated 10.09.2014, has been disputed by petitioner/defendant, the onus shifts to respondent/plaintiff to prove that the agreement to sell dated 10.09.2014 is a genuine document, which was actually signed by petitioner/defendant in front of some witnesses.

9. Further, the opinion of the handwriting expert alone is not the deciding factor in finding out the genuineness of the sale agreement dated 10.09.2014 and the same can be tested by examining the attesting witnesses, as also by some other modes and it is the duty of respondent/plaintiff to establish his case by leading sufficient, convincing and cogent oral and documentary evidence. Learned trial Court fell in error in allowing the application filed by respondent/plaintiff.

10. Be that as it may, since the signatures on the agreement to sell are disputed, unless the defendant gives his genuine signatures or in the alternative gives consent that his signatures on the written statement be

treated as genuine signatures, Hand Writing Expert cannot also possibly give opinion on the basis of disputed signatures contained on the agreement *ibid*. In the premise, the plaintiff is at liberty to get the defendant's signatures, as put by him on the Power of Attorney, which is on the court file and/or in the written statement or both, by getting the same compared with the disputed signatures on the agreement to sell. It may not be out of place to mention here that it is open to the plaintiff to assert that refusal of the defendant to give specimen of his genuine signatures may also result in inviting adverse inference by the Court against him in accordance with law. No doubt, it is open for the Court below at an appropriate stage to ask the defendant, whether or not he is willing to give specimen of his genuine signatures on its own to resolve the controversy. It is only if he refuses at that stage that the Court can draw adverse inference. To that extent, it is left open for the Court below to seek specimen of genuine signatures from the defendant on its own at subsequent stage if it is so warranted. The same would not only serve the purpose to come at the just decision, but may also meet the objection of the plaintiff.

11. Furthermore, there is another aspect of the matter. Given the constitutional right guaranteed under Article 20 of the Constitution of India, a person who is under-trial before Court cannot be compelled to be a witness against himself or against his own cause, which jeopardise the defense taken by him before the Court. In that contest, the Ld. Trial Court has committed a mistake in law by allowing the application vide impugned order.

12. It is, therefore, made clear that though the impugned order is being set aside but the same shall not prevent the Court below from drawing

adverse inference against petitioner, which is otherwise permissible and would be justified in the civil proceedings pending before it, provided of course, an opportunity is given to defendant to come clean as noted herein above. The same would not only be in the larger interest of justice but also would serve the purpose of petitioner which was sought to be achieved by the application filed by him.

13 In the premise, instant revision petition is allowed and the impugned order dated 18.04.2022 (Annexure P-1) is set aside.

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

(ARUN MONGA)
JUDGE

May 10, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No