

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

Date of decision: 24.05.2023

...Petitioner

VS

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rakesh Dhiman, Advocate,
For the petitioner.

ARUN MONGA, J. (ORAL)

Under challenge herein is an order dated 19.04.2023 passed by learned Civil Judge (Junior Division), Pataudi whereby, application (Annexure P-5) filed by petitioner-plaintiff for producing additional evidence, was dismissed.

2. Petitioner has filed a suit before the Court below for possession by way of specific performance of contract with permanent injunction. His pleaded case is that when defendant filed his written statement, he though denied execution of the agreement to sell in question, but there is no specific denial about genuineness of his signatures. It is only in his cross-examination that he denied his signatures. Petitioner, therefore, filed application to lead additional evidence by producing report dated 01.04.2023 (Annexure P-4) of Sh. Vijay Kumar Rastogi, handwriting and finger expert, which has been dismissed. Hence, the instant revision petition.

3. Learned counsel submits that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner/plaintiff may be permitted to adduce additional evidence in the interest of justice and equity.

4. Given the nature of order being passed, there is no necessity to issue notice to respondent, as no serious prejudice would be caused to him. Notice to respondent is thus dispensed with.

5. I have heard learned counsel for petitioner and perused the case file.

6. Application has been dismissed on the ground that once the plaintiff evidence has been closed, he cannot be permitted to adduce additional evidence at this stage. 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 adducing evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to produce evidence, particularly when the other side can be compensated with costs. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to adduce additional evidence.

6.1 Trial in the suit may lead to unjust consequences in the absence of an opportunity to petitioner/plaintiff to adduce additional evidence.

7. It appears that learned trial Court seems to have got over-swayed with the fact that since plaintiff had already closed evidence in affirmative and thereafter defendant had also closed evidence, there

was no reason to grant further opportunity and the same would delay the proceedings.

8. Qua the delay, learned Trial Court may have had a valid reason to not accept the application, however, delay would rather be detrimental to plaintiff himself who has instituted the suit seeking specific performance of the agreement in question. For the delay caused to defendant, same could have been compensated by imposing costs on plaintiff for not adducing requisite evidence at the relevant time.

9. It was for the first time only in the cross-examination of DW-1, which was conducted on 27.02.2023 that there was a clear cut denial of his signatures at Mark A-1 on Ex. P-2 i.e. agreement to sell dated 15.10.2015 *qua* which the specific performance has been prayed for. Therefore, plaintiff was well within his rights to seek handwriting expert's opinion on the disputed signatures.

10. It is only when there was a specific denial by defendant that plaintiff swung in to action and report of the handwriting expert's appended herein as Annexure P-4 was obtained. The said record was sought to be adduced in evidence by filing of appropriate application which was dismissed.

11. Having seen the contents of the application, I am of the view that proposed additional evidence would rather be of assistance to learned Trial Court below to adjudicate on the controversy before it.

12. In the premise, in the larger interest of justice, I deem it appropriate to grant two effective opportunities to petitioner/plaintiff to adduce additional evidence, subject to costs of Rs.10,000/- to be paid to respondent/defendant which shall be a condition precedent. If the costs

are not paid, the impugned order shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed.

13. Needless to say that defendant shall also have a right to adduce in rebuttal thereof in case, he so wishes and is advised.

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

24.05.2023
vandana

(ARUN MONGA)
JUDGE

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