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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: April 11, 2023

Janak Raj

....Revisionist

versus

M/s Dinanagar Gas Service and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sachin Ohri, Advocate for revisionist.

Mr. Rajesh Bhateja, Advocate for respondents No.1 and 2.

Mr. Varun Sharma, Advocate for

Mr. Raman Sharma, Advocate for respondents No.3 to 5.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 17.07.2019 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurdaspur whereby application of revisionist-plaintiff under Sections 45 and 73 of the Indian Evidence Act, 1872 (for short 'Evidence Act') for permission to examine handwriting expert and application under Order XI Rule 14 read with Section 151 of Code of Civil Procedure, 1908 (for short 'Act') for production of original agreement dated 20.10.2018, was declined.

2. Learned counsel for revisionist would contend that revisionist/plaintiff filed a suit for dissolution of partnership business and rendition of accounts of firm titled and styled as M/s Dinanagar Gas Service, HPCL, LPG Distributorship Taragarh Road, Dinanagar, Tehsil and District Gurdaspur with consequential relief of permanent injunction restraining respondents No.3 to 5 from supplying LPG and operating further business transactions with respondents No.1 and 2. Revisionist/plaintiff and defendants No.1 and 2 had executed a

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partnership deed dated 04.07.2008 *qua* aforesaid Gas Service unit. Also contends that revisionist filed an application under Sections 45 and 73 of Evidence Act seeking permission to examine handwriting expert for obtaining expert opinion with respect to disputed signatures on agreement dated 31.01.2001 (Annexure P-4) and partnership deed dated 04.07.2008 (Annexure P-5). Further contends that revisionist also moved an application for production of original agreement dated 20.10.2008 for comparison of signatures of respondent/defendant No.2. Vide impugned order dated 17.07.2019 (Annexure P-1), both the applications were dismissed. Hence, present revision petition.

3. Learned counsel for revisionist would contend that learned Court below fell in grave error by misreading the applications filed by revisionist/plaintiff. In fact, examination of expert would help for just and proper adjudication of the matter.

4. On the other hand, learned counsel for respondents No.1 and 2 and learned counsel for respondents No.3 to 5 submit that learned Court below has given cogent reasons for rejection of both the applications filed by revisionist and no fault can be found with the approach of learned Court below.

5. I have heard learned counsels for parties and perused case file.

6. *Qua* the second application filed by revisionist under Order XI Rule 14 CPC for production of original agreement dated 20.10.2008, order assailed herein, is premised, *inter alia*, on the following reasoning:

“The applicant has sought the production original agreement dated 20.10.2008 allegedly entered into between M/s Dina Nagar Gas Service and Hindustan Petroleum Corporation Ltd., which is alleged to be in possession of defendant no.2. The respondent in their reply have pleaded that the said document is not in their custody and with defendants no.3 to 5, whereas defendants no.3 to 5 have not answered the same in proper way and have neither admitted its possession nor they have denied it. Perusal of the file reveals that plaintiff had filed the present suit for dissolution of partnership business and rendition of account and with consequential relief of permanent injunction restraining the defendants no.3 to 5 from supplying LPG and

operating further business transaction with defendants no.1 and 2. In this regard plaintiff has relied upon a partnership deed dated 4.7.2008 allegedly executed between Miss Asha Rani and plaintiff. It is relevant to mention here that the defendants no.1 and 2 have denied any such partnership deed and the defendants have alleged that the said Petrol Pump is in her name only and has denied any agreement between the plaintiff and defendant no.2. Perusal fo the file further reveals that as per defendants no.3 to 5, the Gas Agency has been allotted to defendant no.2 alone and copy of the agreement dated 20.10.2008 is already placed on the file. Since, both sets of defendants have denied the possession of agreement between defendant no.2 with defendants no.3 to 5 no direction can be issued to them. However relevant reference will be drawn at the appropriate stage. In these observation, the applications in hand is hereby declined.”

7. With regard to application under Order XI Rule 14 of CPC, a perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court.

8. The contentions of the petitioner have been duly considered and rejected by Learned Court below by giving sound and convincing reasons in the impugned order, more particularly in the part extracted above. I am inclined to agree with the view taken by learned Court below in respect of the said application.

9. *Qua* the first application for permission to examine the hand writing expert, by seeking original sample signatures of defendant No.2 (respondent No.2), without going into the merits of the impugned order, the same deserves to be modified in terms of candid stand taken by respondent No.2 in her reply to application seeking her signatures, which is reproduced herein below:

“4. That, in reply to para no. 4 it is submitted that the answering defendant is ready to give specimen signature in this Honorable Court, as per the direction of this Honorable Court, but the answering respondent never executed any such agreement and partnership deed with the plaintiff as alleged in this application, if any document produced in this Honorable Court, by alleging the same as agreement and partnership deed, the same has been forged and fabricated and prepared with the connivance of the witnesses and writer. The answering respondent never executed or signed on the above said papers.”

10. *Apropos*, the above stand taken by respondent No.2, application under Section 45 read with Section 73 of the Evidence Act, filed by revisionist

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herein/plaintiff seeking permission of learned trial Court to obtain the signature of respondent No.2 and to examine hand writing expert for opinion in respect of disputed signatures of respondent No.2 on agreement dated 31.01.2001 and partnership deed dated 04.07.2008 is allowed.

11. With the limited modification in the impugned order (Annexure P-1), as aforesaid, learned trial Court is requested to proceed further with trial after obtaining sample signatures from respondent No.2 and examination of hand writing expert at the petitioner’s expense, in accordance with law.
12. Disposed of, accordingly.
13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No