

2024:PHHC:172177



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

**121**

CR-5163-2024 (O&M)  
Date of decision: 12.12.2024

Subhash Kumar Jain

...Petitioner

Versus

Vinod Kumar Jain and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Aman Priye Jain, Advocate for the petitioner.

\*\*\*\*\*

**VIKAS SURI, J.**

**CM-20962-CII-2024**

The instant application under Section 151 CPC to place on record copy of evidence of the petitioner is allowed and Annexures P-4 and P-5 are taken on record, subject to all just exceptions.

CM stands disposed of.

**CR-5163-2024**

1. This is a petition under Article 227 of the Constitution of India, assailing the order dated 03.08.2024 passed by learned Civil Judge (Junior Division), Faridkot, whereby the plaintiff-petitioner has been directed to give his specimen handwriting and signatures.

2. Briefly stated, the petitioner and respondent No.1, who are real brothers, separated from the business in the year 1990 as relations



between the parties were strained and the petitioner shifted to Kurukshetra. Thereafter, relations of the parents of the parties also became strained in the year 1992 and their father, namely Sh. Amar Nath Jain, who was previously carrying on the business under the name and style of M/s Jain Agencies, closed his business at Faridkot.

2.1 The parents of the parties were residing with the petitioner at Thanesar and sometimes at Faridkot, in their own house. Respondent No.1 used to reside in a room on the ground floor and whole of first floor. However, after the relations got strained, respondent No.1 was asked by Sh. Amar Nath Jain to vacate the house in his possession. Sh. Amar Nath Jain executed a registered Will dated 16.11.1998, in favour of the petitioner. As respondent No.1 refused to vacate the house, Sh. Amar Nath Jain filed the suit for possession of the portion in possession of respondent No.1, namely Vinod Kumar Jain, which was decreed on 30.07.2022, and respondent No.1 was directed to handover the possession of the suit property. The appeal preferred thereagainst by respondent No.1 was dismissed, vide judgment and decree dated 18.12.2023 and the regular second appeal before this Court was also dismissed vide judgment dated 29.01.2007.

2.2 In the meanwhile, Sh. Amar Nath Jain unfortunately passed away and the petitioner, being legal representative of Sh. Amar Nath Jain on the basis of the registered Will dated 16.11.1998, filed the execution application for possession of the suit property. Respondent No.1 preferred a revision petition before this Court, which was allowed,



vide order dated 06.09.2016, on the ground that Sh. Amar Nath Jain, the original decree holder, has since died and the petitioner has not sought any declaration qua inheritance and in the absence of such declaration, the judgment and decree dated 30.07.2022 cannot be legitimately executed.

2.3 The petitioner filed suit for declaration to the effect that he is entitled to inherit the estate of Sh. Amar Nath Jain on the basis of registered Will dated 16.11.1998. It is pleaded therein that the petitioner never entered into any agreement of arbitration with respondent No.1. After the demise of their father, relatives of the petitioner tried to effect compromise between the parties and they got his signatures on some blank papers and later on, might have manipulated those into a false agreement of arbitration. No arbitration proceedings were ever conducted and no award was ever pronounced.

2.4 Respondent No.1 filed an application under Section 36 of the Arbitration and Conciliation Act, 1996 (herein after referred to as 'the Arbitration Act') to execute the alleged award. The said application was dismissed by learned Additional District Judge, Faridkot, holding that there is no arbitration award between the parties. The permission sought to lead secondary evidence on the basis of photocopy of the alleged award was declined by the Court of first instance and the petitioner remained unsuccessful in the revision petition filed before this Court against the said order, which was dismissed as withdrawn on 06.04.2018.



2.5 In another revision petition preferred by respondent No.1, which was dismissed vide order dated 21.08.2018, it was observed that evidently, there is no legal award on record, which can be executed in terms of Section 36 of the Arbitration Act. In the aforesaid suit, during the cross-examination of the petitioner, respondent No.1 produced a photostat copy of letter alleged to be written by the petitioner, in Punjabi, stating that he was sending a copy of the award. The petitioner denied the writing on the said letter to be his writing, whereafter respondent No.1 filed an application to direct the petitioner to give his specimen handwriting and signature in Punjabi as well as in English. The said application was allowed vide impugned order dated 03.08.2024.

3. Aggrieved by the aforesaid, the petitioner has assailed the said order by way of the present petition.

4. Learned counsel for the petitioner has argued that petitioner cannot be compelled to give specimen of his handwriting as he cannot be compelled to be a witness against himself or against his own cause, which would jeopardize the defence taken by him before the Court, in the light of the constitutional right guaranteed under Article 20 of the Constitution of India. It is further argued that it is open to the petitioner to refuse to give handwriting specimen and the same could only result in drawing adverse inference by the Court, in accordance with law. Reliance has been placed upon judgment of a coordinate Bench rendered



in CR-2251-2022 titled as *Gopal Singh vs. Inderjit*, decided on 10.05.2023 (2023:PHHC:077497).

4.1 Learned counsel for the petitioner further submits that petitioner is a senior citizen and is not keeping good health and is confined to bed, as such. It is still further submitted that the trial Court is not proceeding with the suit and the proceedings are being deferred, awaiting the petitioner to appear and give specimen signatures and handwriting in Punjabi.

5. I have heard learned counsel for the petitioner and perused the record with his able assistance.

6. It is not disputed that during cross-examination of Subhash Kumar Jain petitioner, photocopy of letter Mark 'A' was put to him. The petitioner denied that the contents of the said letter in Punjabi language to be in his handwriting. However, he had also stated that he is ready to give his specimen handwriting in Punjabi language. During the course of hearing, learned counsel for the petitioner, referring to the decision in *Gopal Singh's case* (supra), conceded that there is no dispute about the proposition of law that Court can always call upon a party to give specimen handwriting and signatures, for the purpose of comparison with the disputed handwriting or signatures or to get it compared from handwriting expert, so as to reach at a conclusion for adjudicating the matter in controversy. It is trite law that opinion of the handwriting expert alone is not the deciding factor in finding out the genuineness of



an instrument or the letter, which has to be established by leading sufficient cogent evidence.

7. Keeping in view the aforesaid, the Court below was well within its jurisdiction to call upon the petitioner to give his handwriting specimen. However, it was equally open to the petitioner to refuse to do so, which of course, would be at the risk inviting adverse inference by the Court against him, in accordance with law.

8. In the present case, in the given circumstances, whereby the petitioner is resisting the impugned order, the trial Court would not be erring in arriving at the conclusion that the petitioner is not willing to give specimen of his signatures and handwriting. There being non-compliance of the order passed in terms of Section 73 of the Indian Evidence Act, the same shall not prevent the trial Court from drawing an adverse inference against the petitioner, which he has exposed himself to, by his act and conduct, of his own volition.

9. In the light of the aforesaid, the petitioner cannot be, thus, compelled to give his specimen handwriting and signature, but he cannot escape the consequences of not doing so. Moreover, as substantial time has already lapsed since the impugned order was passed, the trial cannot be paused awaiting the specimen handwriting/signatures.

10. Accordingly, the trial Court is commanded to proceed with the suit after allowing a further period of six weeks from today, for the petitioner to comply with the impugned order dated 03.08.2024, in accordance with law.



- 11. The revision petition is disposed of in the aforesaid terms.
- 12. Pending applications, if any, also stand disposed of.

December 12, 2024  
*sumit.k*

(VIKAS SURI)  
JUDGE

Whether speaking/reasoned : Yes / No  
Whether Reportable : Yes / No