

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

234

CR No.6899 of 2023
Date of Decision : 09.04.2024

Rakesh KumarPetitioner

VERSUS

IndrawatiRespondent

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jain, Advocate for the petitioner.

Mr. S.S. Khurana, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. Challenge in the present revision petition is to the impugned order dated 08.09.2023 whereby the application filed by the defendant-petitioner for allowing the handwriting expert to take photographs of cheque (Ex.P7) has been dismissed as also his evidence has been closed by order.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for recovery of Rs.12,50,800/-. In para 3 of the written statement it was specifically stated that a blank cheque had been handed over by the defendant-petitioner to the plaintiff-respondent towards security of Rs.5,00,000/- and no other details were filled in apart from the signatures of the defendant-petitioner herein. It was further averred that the plaintiff-respondent has forged the cheque by filling in the same. While leading his evidence, an application was filed by the defendant-petitioner for permitting the handwriting expert to take photographs of the cheque in order

to give a report regarding the alleged forgery. The said application was dismissed vide the impugned order dated 08.09.2023. Hence, the present revision petition.

3. Learned counsel for the defendant-petitioner would contend that the Trial Court has dismissed the application holding that no such opinion was required as there was no admitted handwriting sample on the case file to compare and moreover the difference could be observed by the Court. It is further the contention that the evidence has wrongly been closed and that given two effective opportunities the defendant-petitioner would conclude his evidence.

4. *Per contra* learned counsel for the plaintiff-respondent has contended that there are no admitted signatures in the present case and further despite numerous opportunities the defendant-petitioner failed to conclude his evidence and even the costs were not paid and that as per Section 35B CPC once the costs are imposed it is a condition precedent for further prosecution of the case.

5. Heard.

6. The argument of learned counsel for the plaintiff-respondent is that once the costs are imposed under Section 35B CPC it would be a condition precedent for further prosecution of the case. A perusal of Section 35B CPC reveals that in case the costs are not paid the same is to be included in the decree passed. Section 35B CPC also states that the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses

incurred by him in attending the Court on that date on which the adjournment is sought. In the present case there is no such reasoning which has been recorded. In any case as per Section 35(2) CPC the said costs if not paid can be included in the decree which has been passed.

7. In the present case, at the time of leading evidence an application was filed by the defendant-petitioner for permission to handwriting expert to take photographs of the cheque which is alleged to be forged and fabricated in the written statement. The Trial Court has erroneously held that there are no admitted signatures. There are signatures on the file i.e. on the Court file itself i.e. the signatures of the plaintiff-respondent on the plaint as well as his affidavit and on the written statement of the defendant-petitioner as well as his affidavit. In any case, it is the evidence of the defendant-petitioner which has to be led and the Court has not been requested to send the said document for FSL examination that the admitted signatures were required for comparison. The plaintiff-respondent would have her opportunity to rebut the said evidence.

8. In view of the above, the first part of the order passed by the Trial Court is not sustainable in law and is accordingly set aside. The application stands allowed accordingly.

9. The defendant-petitioner has made a statement that he is willing to compensate the plaintiff-respondent by way of costs given two effective opportunities. This Court deems it appropriate to grant two effective opportunities to the defendant-petitioner to conclude his evidence subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent, which shall be a condition precedent for leading the evidence.

10. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

09.04.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO