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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1417-2024 (O&M)
Reserved on : 06.03.2024
Date of decision : 20.03.2024

Krishna Devi ... Petitioner(s)

Versus

Deepak Aggarwal & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Onkar Rai, Advocate for the petitioner.

Mr. Vineet Kumar Jakhar, Advocate
for the caveator-respondent No.1.

ALKA SARIN, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 09.02.2024 (Annexure P-5) vide which the third application filed for leading additional evidence has been dismissed by the Trial Court.
2. The brief facts relevant to the present case are that the plaintiff-respondent No.1 filed a suit for specific performance of agreement to sell dated 10.02.2014. The written statement in the present case was filed on 19.10.2016. In the said written statement a reference was made to some recorded conversation. Defendant No.1-petitioner availed 20 effective

opportunities for leading her evidence and thereafter the counsel for defendant No.1-petitioner closed her evidence on 02.09.2023. The pen drive with the conversation now sought to be produced as additional evidence was produced on the record as Ex.D3 by DW-1 on 18.04.2023 alongwith the affidavit of examination-in-chief. Defendant No.1-petitioner (Krishna Devi) and her husband Rakesh Aggarwal were not produced as witnesses. On 07.11.2023 an application was filed for additional evidence to summon Smt. Raj Aggarwal and Sh. Rakesh Aggarwal, parents of plaintiff-respondent No.1 as defendants' witnesses which application was dismissed by the Trial Court vide order dated 13.12.2023. No revision was preferred against the said order. A second application was filed for additional evidence on 20.12.2023 which was allowed by the Trial Court vide order dated 08.01.2024. Thereafter the present application, which is the third application, was filed for additional evidence. The Trial Court vide order dated 09.02.2024 dismissed the said application with exemplary costs of Rs.10,000/-. Aggrieved by the same, the present revision petition has been filed by the defendant No.1-petitioner.

3. Learned counsel for the defendant No.1-petitioner would contend that the earlier counsel though had exhibited the pen drive as Ex.D3, however, the witnesses were not produced and the counsel did not examine Rakesh Aggarwal - father of plaintiff-respondent No.1 - in order to prove the conversation of the father of the plaintiff-respondent No.1, namely, Rakesh Aggarwal. It is further the contention that it is only after the counsel was changed that the said fact came to the notice of defendant No.1-petitioner.

4. *Per contra*, the learned counsel for the caveator-plaintiff-respondent No.1 would contend that repeated applications have been filed for leading additional evidence only to delay the matter. It is further the contention that twenty effective opportunities were taken by defendant No.1-petitioner to conclude her evidence and thereafter this is the third application for additional evidence. The learned counsel would further contend that the story being put forth that the earlier counsel did not summon the witnesses is also unbelievable inasmuch as the earlier counsel is none other than the daughter of defendant No.1-petitioner.

5. I have heard the learned counsel for the parties.

6. In the present case twenty effective opportunities were granted to defendant No.1-petitioner to lead her evidence. Thereafter an application was filed for leading additional evidence which was dismissed vide order dated 13.12.2023. No revision filed against the said order. Thereafter a second application was filed which was allowed vide order dated 08.01.2024. This is the third application which has been filed. The ground taken in the third application for wanting to lead additional evidence is that defendant No.1-petitioner had collected all the concerned conversation in a pen drive (Ex.D3) and had given it to her counsel. However, the previous counsel exhibited the pen drive but did not prove the conversation as per law and that this fact came to the knowledge of defendant No.1-petitioner when she engaged another counsel. The Trial Court, while dismissing the application, has observed that the previous counsel in the present case was none other than the daughter of defendant No.1-petitioner and she is a

lawyer with 15 years of standing and she had herself conducted the cross-examination. It has also been noticed in the impugned order that the plaintiff-respondent No.1 had pointed out that defendant No.1-petitioner is a colonizer and involved in the sale and purchase of property. She has been involved in the sale and purchase of about 400 properties and hence she was not a simple lady and her daughter who has 15 years of standing has been contesting all her cases. There are about 10-15 cases which are pending and there are many other cases in which her son is a party. The present application has been moved at the stage when the evidence was concluded on 25.09.2023 and plaintiff-respondent No.1 closed his rebuttal evidence. It has further been observed that defendant No.1-petitioner on one ground or the other has not been addressing arguments. The learned counsel for defendant No.1-petitioner has not been able to convince this Court that this was a mere slip on the part of the counsel. The counsel for defendant No.1-petitioner is none other than her daughter who is her lawyer in 10-15 other cases. The written statement was filed on 19.10.2016 wherein there is a mention of the recordings and it is hence not a case where the conversation was not within the knowledge of defendant No.1-petitioner. Rather, the pen drive was exhibited as Ex.D3. Defendant No.1-petitioner, as it appears, is trying to delay the matter on one pretext or the other and hence no fault can be found with the order passed by the Trial Court. No illegality or irregularity is found with the impugned order. The Trial Court has already imposed exemplary costs of Rs.10,000/-. This Court, therefore, refrains from imposing any further costs.

7. In view of the above, the present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.
8. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

20.03.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

At the time of pronouncement of this judgment, the learned counsel for the petitioner has pointed out that the main civil suit i.e. CS-125-2016 pending before the Additional Civil Judge, (Senior Division), Ganaur, District Sonipat stands decreed with costs vide judgment and decree dated 19.03.2024 and hence the present revision petition has since been rendered infructuous.

Since the judgment stands signed and pronounced, no alteration in the matter is called for.

20.03.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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