

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

**1. Date of decision: 21.09.2015
CR No.3059 of 2014 (O&M)**

Chaitanya Kochar

...Petitioner

versus

Shri Balbir Singh and another

...Respondents

2. CR No.3614 of 2014 (O&M)

Chaitanya Kochar

...Petitioner

versus

Shri Balbir Singh and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Vaibhav Sehgal, Advocate,
for the petitioner(s).**

None for the respondents.

RITU BAHRI, J.

This order will dispose of Civil Revision Nos.3059 and 3614 of 2014 together, as both have arisen out of one suit i.e. Civil Suit No.52908/2013 titled as “Chaitanya Kochar Vs. Balbir Singh”. For reference, facts are taken from Civil Revision No.3059 of 2014.

In Civil Revision No.3059 of 2014, the petitioner is seeking setting aside of the order dated 11.02.2014 (Annexure P-1) passed by the Civil Judge (Junior Division), Jalandhar, whereby application filed by the him under Section 151 CPC for permission to lead additional evidence, has

been dismissed.

On the other hand, in Civil Revision No.3614 of 2014, challenge is to the order dated 11.02.2014 (Annexure P-1), whereby application filed by the petitioner for permission to examine voice expert to ascertain the authenticity of the voice and video footage in evidence, has been dismissed.

Plaintiff-petitioner filed a suit for possession by way of specific performance of agreement to sell dated 07.11.2003 in respect of House No.423-L (Western Portion) built on area measuring 7.21 Marlas (21'6" X 69' 6"), situated at Model Town, Jalandhar. Stand of defendant-respondent No.1 before the trial Court was that he had not executed the aforesaid agreement to sell with the plaintiff-petitioner. Rather, prior to entering into agreement to sell with the present plaintiff, he had executed another agreement to sell dated 22.10.2003 with defendant No.2-Om Parkash Verma. After framing of issues, the evidence of the plaintiff-petitioner was concluded on 18.09.2009. Thereafter, defendants started their evidence and Balbir Singh-defendant No.1 appeared as DW-1 and tendered his affidavit on 10.08.2010 (Annexure P-6). Thereafter, evidence of the defendants was closed and at the stage of rebuttal evidence, the present application under Section 151 CPC was filed by the plaintiff-petitioner for permission to lead additional evidence, which was dismissed vide order dated 11.02.2014 (Annexure P-1).

Perusal of impugned order (Annexure P-1) shows that FIR No.15 dated 14.01.2013 had been got lodged against defendant No.1 and his wife at Police Station, New Baradari, by the present plaintiff-petitioner with the allegation that agreement to sell dated 22.10.2013 was an attempt made to deprive the plaintiff-petitioner from execution of this agreement. The

application for additional evidence has been dismissed on the ground that mere registration of the FIR would not be a relevant piece of evidence for decision of the civil suit and the statement made by defendant No.2 under Section 161 Cr.P.C. was having no evidentiary value.

Learned counsel for the petitioner has referred to affidavits dated 02.02.2013 and 15.02.2013 (Annexures P-9 and P-10), which have been duly attested by the Executive Magistrate, Solan. These are not the statements made before the police under Section 161 Cr.P.C. Moreover, defendant No.1, after registration of the FIR, has been declared as proclaimed offender and his service had not been effected, as he was not found residing at the given address. On the second address, his house was found locked. Before this Court, Mr. Abhivan Gupta, Advocate, had appeared on behalf of respondent No.1, but later on, he pleaded no instructions on his behalf. Thereafter, an attempt was made to serve him. Even today, as per Office report, notice issued to respondent No.1 on his first address has not been received back served or otherwise. However, notice issued on his second address has been received back unserved with the report that he is not residing at the given address.

Learned counsel for the petitioner has further informed that vide order dated 25.01.2015, defendant No.1 has been declared as proclaimed offender.

After deletion of Order 18 Rule 17-A CPC, the Courts had been granted discretionary powers under Section 151 CPC to allow additional evidence, if such evidence is necessary for just decision of the dispute between the parties. Affidavits dated 02.02.2013 and 15.02.2013 (Annexures P-9 and P-10) were neither in the knowledge of the plaintiff at the time of

filing of the suit nor at the time of closing of evidence in the year 2009. In these circumstances, this Court deems it fit to provide effective opportunity to the plaintiff-petitioner to prove these affidavits by way of additional evidence.

Resultantly, both the impugned orders dated 11.02.2014 are set aside and the trial Court is directed to provide one effective opportunity to the plaintiff-petitioner to examine an expert in order to ascertain the authenticity of voice and video footage. The petitioner is also granted permission to prove affidavits dated 02.02.2013 and 15.02.2013 (Annexures P-9 and P-10) by way of additional evidence. Along with this, the order passed by the Deputy Commissioner cancelling the license of the Deed Writer, who had scribed the agreement to sell dated 22.10.2003, is also hereby set aside.

Both the petitions i.e. Civil Revision Nos.3059 and 3614 of 2014 are allowed accordingly.

(RITU BAHRI)
JUDGE

21.09.2015
ajp