

223.

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

Civil Revision No.4551 of 2013 (O&M)

Date of decision:30.11.2015

M/s Agrofab and another

.... Petitioners

versus

M/s Technohardware Enterprises Pvt. Ltd., and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pritam Saini, Advocate,
for the petitioners.

Mr. Arun Jain, Senior Advocate,
with Mr. Adarsh Jain, Advocate,
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. At the appeal against the trial court's judgment declining relief of specific performance, the plaintiff-appellant filed an application under Order 41 Rule 27 CPC for reception of additional evidence of certain documents including (i) the Recovery Officer's order dated 20.02.2006 directing attachment of certain properties; (ii) an affidavit of assets filed by the CD-2 referring to the properties that the party wanted to be attached; and (iii) document dated

01.07.2011. These documents, according to the appellant, were relevant for consideration of a finding whether the particular property that had been agreed to be purchased under the document dated 20.08.2004 had indeed been attached as a property described as “a” and left out of the properties which were required to be attached as per the affidavit of assets filed by CD-2.

2. I had originally passed an order stating that the manner of disposal of the application under Order 41 Rule 27 CPC independently without the decision in the appeal itself was not appropriate. An application for recalling the order was filed by the applicant/respondent to contend that the appeal was also heard and as soon as the order was passed in merely the application without disposing of the appeal, the observations made already that the court could not have heard the application without hearing the appeal was not proper. The counsel says that this affidavit and the order were certainly available with the plaintiff and there was no justification for their non-production.

3. The documents that were sought to be filed, the learned counsel for the revision petitioner/non-applicant states that he will not seek for reception of any document other than the three documents referred to above. The counsel says that the relief of specific performance was declined only because it will be inefficacious to grant the relief when there was an order of

attachment. According to the learned senior counsel that the order of attachment which was issued on 02.03.2006 in Form No.16 was inconsistent with the order dated 20.02.2006 which was the order directing attachment and there was a clerical mistake in carrying through this order by including a property in Form No.16 that was not ordered to be attached by order dated 20.02.2006. The issue of whether there had been an attachment and whether there existed such an order would surely be a matter for consideration and the appellate court itself has observed that the actual purport of the documents will be considered at the time of disposal of appeal.

4. There is a lesson for the appellate court to learn that it shall not pass any order under Order 41 Rule 27 CPC otherwise than along with the disposal of appeal either allowing dismissing or remanding the matter. An order passed independently under Order 41 Rule 27 CPC has been the cause for a party to complain by means of an independent revision. If this order had been passed receiving the document and the appeal had been disposed of, the reception of document could have been the subject of challenge in a regular second appeal without bringing an independent revision petition. This order passed was against the procedure which shall be followed, for, Order 41 Rule 28 CPC marks out an exception to situations where any proof is required for the document which is produced at the appellate court. It has options of securing such

proof by examining any witness or if it was a public document, it could have received the same without any further evidence or if it was a matter that would require a report to be called from the lower court on the document it could have allowed for parties to give evidence and call for a report. The non-observance of the procedure prescribed in law has unnecessarily resulted in a revision being filed, an order to be passed, an application for review and a fresh order, all being the consequences of an indiscreet order passed by the lower appellate court.

5. The order already passed is explained that the additional documents referred to above shall be considered along with the appeal and both the parties and the court will pronounce a judgment if it has already heard the arguments. If there is any clarification necessary, it shall be open for the court to reopen the case and allow for arguments to be made on the basis of documents which are filed at the appellate stage. It shall not any longer be open for the applicant-respondent to plead that the documents have not been proved. Being certified copies of documents prepared by a public authority, I direct them to be received as evidence in the interest of justice and a due consideration shall be made on the basis of the court's own reasoning or if necessary, by calling upon counsel to argue in the manner referred to above.

6. The revision petition against the reception of additional documents is dismissed but the manner of how the documents will be relied upon is subject to the observations made above.

(K.KANNAN)
JUDGE

30.11.2015
sanjeev