

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

(107)

**CR No. 4791 of 2015 (O&M)
Decided on: August 05, 2015.**

Jaswinder Kaur

.... Petitioner

Versus

Major Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Brijeshwar Singh Bhalla, Advocate,
for the petitioner.

M.M.S. BEDI, J (ORAL)

This is defendant's revision petition against order dated 14.07.2015, dismissing the application of the defendant-petitioner for recalling the witnesses examined by the plaintiff, prior to the amendment of the plaint.

Learned counsel for the petitioner submits that by virtue of amendment, the plaintiff-respondent No.1 has been permitted to incorporate a plea, in the alternative, for joint possession pursuant to the declaration of sale deed as null and void and for recovery of Rs.7,50,000/- by rendition of accounts from defendant No.2.

On asking of the Court, the petitioner has placed on record Annexures P-3 to P-7, copy of the plaint, written statement, amended plaint etc.

After hearing counsel for the petitioner, it transpires that pursuant to the amendment permitted, the trial Court had opted to frame an additional issue to the effect whether the plaintiff was entitled to recover

amount of Rs.7,50,000/- by rendition of accounts from defendant No.2, to prove which, the onus is placed on the plaintiff.

On asking of the Court, counsel for the petitioner informs that the plaintiff had not sought to re-examine any witness after the amendment was allowed meaning thereby that no additional evidence in affirmative has been produced by the plaintiff.

In view of said circumstances, I do not find any reason to interfere in the order passed by the trial Court declining to re-summon the plaintiff witnesses for cross-examination on the basis of the plea taken up in the amended written statement.

Counsel for the petitioner has also argued that the plaintiff has not paid any Court fee to seek recovery of money as such the suit for alternative remedy is not maintainable.

I have considered the said contention and I am of the opinion that the question of affixation of Court fee is a fair question of law which can be taken notice of by the Court at any time. The witnesses of the plaintiff are not required to be re-summoned for any cross-examination on Court fee.

This petition is dismissed without prejudice to the right of the petitioner to recall the witnesses in case some additional evidence at any subsequent stage is produced by the plaintiff-respondent No.1.

(M.M.S. BEDI)
JUDGE

August 05, 2015
harsha