IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No.5664 of 2015 (O&M).
Date of Decision: 01.09.2015.

M/s Rama Krishana Dyeing and Printing Works ....Petitioner.

VERSUS

Satya Pal Khanna and others ....Respondents.

***

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. V.K. Sandhir, Advocate for the petitioner.

***

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 25.05.2015 and 25.08.2015 passed by learned Civil Judge (Junior Division), Amritsar, vide which the application filed by the petitioner for summoning a witness from Income Tax Department was declined.

The facts that emerge from the record are that M/s Rama Krishana Dyeing and Printing Works (petitioner) filed a suit for specific performance of an agreement to sell dated 08.08.1983 and also prayed for a decree of permanent injunction restraining the defendants-respondents not to alienate the suit property in any manner. The defendants-respondents contested the suit. On the rival contentions of the parties, as many as 12 issues were framed on 09.12.1992. The issues were put to trial and both the parties led their respective evidence. Ultimately, the suit was decreed on 30.03.2006 and a decree for specific performance and also granting injunction was passed.

Feeling unsatisfied, respondent No.1 Satya Pal Khanna, being adopted son of Kishan Chand Khanna, legal heir and legal representative of Ram Parkash Khanna, filed an appeal. During the course of hearing of the appeal, learned appellate Court framed three additional issues, which for ready reference are reproduced hereunder:-

> *"1-A. Whether the plaintiff firm is registered partnership firm and Sh. Vijay Kumar is one of its registered partner and he is competent to institute, sign and verify the plaint? If so its effect? OPP.*
>
> *1-B Whether the plaintiff has no locus standi to file the present suit? OPD.*
>
> *1-C Whether suit filed by plaintiff is not maintainable? OPD.*

The appellate Court set aside the judgment and decree passed by learned trial Court and remanded the case back to decide it afresh after giving three effective opportunities to the parties to lead evidence on the additional issues. The said order dated 02.08.2011 of the appellate Court was challenged before this Court by filing appeal SAO No.59 of 2011 (O&M). Disposing of the appeal, this Court passed the following order on 29.01.2015:-

> *"Since, both the parties are ad idem that the judgment*

> *and decree of the trial Court be saved and only report may be called on the additional issues framed by the Appellate Court, therefore, order dated 2.8.2011 is hereby modified to the extent that the judgment and decree of the trial Court shall remain intact and the issues No.1A to IC framed by the Appellate Court shall be decided by the trial Court after giving three effective opportunities to both the parties to lead their evidence to prove the issues and then the report on those issues shall be sent by the trial Court within six months to the Appellate Court, who would consider the finding on those issues as well while deciding the appeal.*

In compliance of order dated 29.01.2015, trial Court gave three effective opportunities to the petitioner. Since the petitioner failed to conclude its evidence despite exhausting adequate opportunities, its evidence was closed by the trial Court vide order dated 25.05.2015. Thereafter, sufficient opportunities were given to the respondents-defendants for their evidence. After the defendants closed their evidence, the case was fixed for rebuttal evidence. At that stage, the petitioner filed an application under Section 151 of the Code of Civil Procedure (for short, "C.P.C.") seeking permission to produce and prove the order of Income Tax Officer of the year 1982-83 passed by S. Amar Singh, I.T.O., issued to the petitioner on 30.11.1984 and to also produce and prove the income tax order dated 30.09.1981 and notice dated 07.03.1983, 28.05.1983 and 30.11.1983 and the assessment order of the years 1984-85 and 1985-86.

The application was opposed by the defendants. Considering the submissions made on behalf of the parties, learned trial Court dismissed the application vide the impugned order dated 25.08.2015.

Aggrieved by the order dated 25.05.2015 and then dated 25.08.2015, the petitioner preferred the instant civil revision.

The submissions of learned counsel representing the petitioner have been heard.

It is argued by learned counsel for the petitioner argued that the documents for production of which the petitioner filed application under Section 151 C.P.C. were necessary and important for just decision of the case. Through the said documents, the petitioner wants to establish that Vijay Kumar was the partner of the firm even in the year 1980-81 and is continuing to be so. The said documents could not be produced at the relevant time on account of non availability of Vijay Kumar, who has since shifted to Ahemdabad and because the case was being fixed on day to day basis for leading evidence. Otherwise also, the documents are such which could not be forged or fabricated by the petitioner being orders/notices passed by Government authorities and therefore, one opportunity be given to the petitioner to produce the same.

With the backdrop of the facts highlighted above, there appears no merit in the argument of learned counsel for the petitioner. Firstly, as observed above, this Court vide order dated 29.01.2015 allowed only three effective opportunities each to both the parties for adducing their evidence on the additional issues No.1(A), 1(B) and 1(C). As is apparent from the order of learned trial Court, the petitioner availed three opportunities allowed to him but he not only failed to produce the documents which he now wants to prove but also failed to close his evidence because of which the trial Court had to close the evidence by order. Secondly, as is clear from the order dated 29.01.2015 the case was sent to the trial Court only for the limited purpose of deciding Issues No.1(A), 1(B) and 1(C) after giving opportunity of leading evidence to both the parties and was directed to send its report to the appellate Court for deciding the appeal. Learned counsel for the petitioner failed to demonstrate how the documents which the petitioner now intends to produce by moving an application under Section 151 C.P.C. relate to Issues No.1(A), 1(B) and 1(C). In fact, as pleaded by the petitioner itself, the issue regarding partnership was covered under the original issue No.1. The petitioner could not be allowed to reopen the case by summoning witness and leading fresh evidence on the original issues especially when the case had been sent for the limited purpose of obtaining report of learned trial Court on additional Issues No.1(A), 1(B) and 1(C). The documents were very much in possession and knowledge of the petitioner and no sufficient reason could be explained by him why they were not produced at the relevant stage of trial. The petitioner had duly availed the opportunities granted to him for leading evidence.

In the above premises, finding no ground for allowing any further opportunity to the petitioner for his evidence, the revision petition is dismissed.

(SNEH PRASHAR)
JUDGE

01.09.2015.
jitender