

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6626 of 2013.

Decided on:-May 27th, 2015.

Rani.

.....Petitioner.

Versus

Raksha Rani and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. Gaurav Singla, Advocate
for the petitioner.

Mr. Arvind Singh, Advocate
for respondents No.1 to 3.

Dr. Bharat Bhushan Parsoon, J.

Dismissal of application of defendant No.4, petitioner herein, for producing additional evidence in the first appellate court vide impugned order dated 30.9.2013, forms genesis of this revision petition.

2. Against decree dated 15.3.2012 passed by the civil court, an appeal was preferred by defendant No.4 interalia impleading plaintiffs as respondents and official defendants No.4 to 6 as proforma respondents. In application made under Order XLI Rule 27 CPC, applicant-defendant No.4 had taken a stand that inadvertently no evidence could be led by her though very important documents in the nature of registered Will dated 14.9.1998 (Ex.D1), ration card, policy and other documents had duly been tendered but the witnesses of the record of the above-said documents could not be

examined. Claiming that these documents were of such nature that those were beyond fabrication, it is averred that the evidence should have been allowed to prove these documents.

3. This application was strongly contested.

4. It is claimed that at appellate stage, an application had been made merely to fill up the lacuna, whereas the same even did not fall within the purview of Order XLI Rule 27 CPC. It was elaborated that despite availing many opportunities, the applicant-defendant had not been able to conclude its evidence which had then been closed by order of the lower court, which order as well had never been challenged before any Court.

5. After considering rival claims of the parties, learned lower court had come to a firm finding that the application for leading additional evidence was merely a device to re-open the entire case without any valid reasons. Sequel, the application was dismissed.

6. By way of this revision petition, it is claimed that additional evidence can be led at any stage when imparting of substantial justice to the parties is the issue. It is pleaded further that the documents were duly tendered in evidence but could not be proved for their proper admission in the evidence.

7. Counsel for the respondents, on the other hand, have urged that when evidence of the applicant-defendant, petitioner herein, had been closed by order of the Court, when she could not conclude her evidence despite availing many opportunities, additional evidence could not have been allowed as a matter of routine.

8. At the outset, it must be noticed that defendant No.4, petitioner herein, had moved this application for additional evidence before the first appellate court where she is the sole appellant against judgment and decree

dated 15.3.2012 which operates, interalia, against her.

9. Merely because the evidence is beyond fabrication, ipso facto is no ground to allow the same particularly when evidence of the applicant-defendant No.4 had been closed by order of the lower court when she had not been able to produce her entire evidence despite having availed multiple opportunities.

10. Moreover, additional evidence cannot be allowed to be used as a handle or a tool by a party to fill up the lacuna in his evidence particularly when rights of the parties have been adjudicated and the applicant-defendant is already in appeal before the first appellate court.

11. It is further worth notice that evidence of the petitioner-defendant No.4 had been closed by order of the Court and now, the application had been moved for producing the same evidence which could not be led earlier by the plaintiff because of closure of her evidence by order of the lower court. It is a conceded position that evidence of the petitioner-defendant was closed by order of the Court which order was never challenged by defendant No.4. In such circumstances, this Court had not allowed such a party to lead additional evidence when the same had not been led in his affirmative evidence. Reference in this regard may be made to ***Bhim Raj Versus Jai Bhagwan 2000(3) RCR (Civil) 16 (P&H)***. Para No.6 of this judgment is apt and relevant. For ready reference, it is reproduced as below:

“In the present case as well, the evidence of the defendants was closed by the Court order and this order was not challenged by the defendants by way of revision or otherwise and the said order has become final. Thereafter the defendants could not be allowed to produce same evidence by way of additional evidence without bringing their case strictly within the provisions of Order XVIII Rule 17-A, Civil Procedure Code. In the present case, there is nothing on record to show that the defendants could not produce their evidence

inspite of exercise of due diligence. Under these circumstances, the petitioner would not be entitled to produce the additional evidence at this stage.”

12. Support may also be sought from ***Surjit Singh and others Versus Varinder Singh and others 2009(5) RCR (Civil) 669 (P&H)*** para No.21 whereof is relevant and for ready reference is appended as below:

“As already observed above, in the present case the evidence sought to be produced by the petitioners was well within their knowledge when they were leading evidence, therefore, it cannot be said that merely because certain evidence was brought on record before the learned Criminal Court would mean that the said evidence came in existence after the passing of the decree by the learned trial Court. Once the evidence of the petitioners was ordered to be closed by order they were rightly not allowed to lead additional evidence to overcome the said order.”

13. When evidence of the defendant No.4 had been closed by order of the Court and the said order had never been challenged in any court of law, application for adducing additional evidence in the appellate court is not maintainable. Relevant part of the observations made by the first appellate court in impugned order dated 30.9.2013 are reproduced as below:

“There is no case made out for exercise of due diligence and despite that the evidence remaining at bay and not see in the light of the day in the Court. Having regard to the totality of the facts and circumstances of the case, this Court is of the considered opinion that the documents sought to be produced by the appellants by way of the application under consideration were in the knowledge of the appellants-applicants at the stage of leading the evidence and those should have been produced before the learned trial Court. The application under discussion is just an exercise to reopen the case without any valid reason. It is not a case of no production of the evidence sought to be produced at this stage despite exercise of due diligence. This court is not satisfied with the explanation furnished through the application for non-production of the documents at the appropriate stage. The arguments that

learned counsel in the learned trial Court was remiss has also failed to impress this Court and if the laxity of the counsel is a valid reason, the judicial decisions would not reach finality and those would have to be reopened at the mere asking.”

14. Keeping in view the facts and circumstances as mentioned earlier, there is no infirmity in the impugned order dated 30.9.2013 passed by the first appellate court and affirming the same, this revision petition, being devoid of any merit, is dismissed.

May 27th, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes