

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 7175 of 2014
Date of Decision: 13.5.2015.**

Inderjit Singh

.....Petitioner

Versus

Raghbir Singh Kalsi and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. B.D.Sharma, Advocate
for the petitioner.

Mr. Karanjit Singh, Advocate
for respondent No. 1.

SABINA, J.

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 13.10.2014 (Annexure P-4) whereby application moved by the petitioner for permission to lead additional evidence, was dismissed.

Learned counsel for the petitioner has submitted that respondent No. 1 has filed suit for specific performance of agreement to sell dated 23.6.2005. Petitioner has been impleaded as defendant No. 2. Case of the petitioner was being pursued by his brother Santokh Singh on the basis of power of attorney executed by petitioner Inderjit Singh in favour of Santokh Singh. However, an objection was taken that Santokh Singh could not pursue the case on behalf of petitioner Inderjit Singh as the power of attorney had not been embossed. Now the petitioner had got the power of attorney, executed by him in favour of Santokh Singh, embossed

and wanted to prove the same on record. Petitioner merely wanted to rectify the technical error and the same could not be considered as filling up of lacuna in the case. In support of his arguments, learned counsel has placed reliance on '**United Bank of India versus Naresh Kumar and others, AIR 1997 Supreme Court 3**', wherein it was held as under:-

“In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.”

Learned counsel for respondent No. 1, on the other hand, has opposed the petition and has submitted that the petitioner could not be allowed to fill up the lacuna in his case by leading additional evidence.

In the present case, respondent No. 1 has filed suit for specific performance of agreement to sell dated 23.6.2005 executed by respondent No. 2 in his favour and has also challenged the sale deed dated 30.6.2006 executed by respondent No. 2 in favour of the petitioner. Petitioner is residing in California and executed power of attorney dated 27.8.2011 in favour of his brother Santokh Singh to appear on his behalf and contest the case. However, the said power of attorney was not got embossed from the

Commissioner at Amritsar. Thereafter, petitioner executed fresh power of attorney dated 23.9.2014 and got it embossed from the Commissioner at Amritsar. As per the said attorney, petitioner has ratified all the previous acts of his attorney holder qua the suit in question. Now the petitioner wants to prove on record the power of attorney dated 23.9.2014. It is not a case where petitioner Inderjit Singh had not executed any attorney in favour of Santokh Singh. The objection was raised that the said power of attorney was not embossed. Apparently, to rectify the said technical error, petitioner Inderjit Singh executed a fresh power of attorney in favour of his brother Santokh Singh to pursue the case on his behalf and rectified all his acts in pursuance to the earlier power of attorney and the new power of attorney dated 23.9.2014 was got embossed from the competent authority. In the facts and circumstances of the case, it cannot be said that the petitioner was trying to fill up the lacuna in his case, rather it is a case where the petitioner has merely rectified the technical error. The learned Trial Court, thus, fell in error while dismissing the application moved by the petitioner for permission to lead additional evidence qua power of attorney dated 23.9.2014.

Accordingly, this petition is allowed. Impugned order dated 13.10.2014 (Annexure P-4) is set aside. Consequently, application moved by the petitioner for permission to lead additional evidence, is allowed.

**(SABINA)
JUDGE**

May 13, 2015
Gurpreet