

Civil Revision No.2663 of 2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.2663 of 2016 (O&M)

Date of Decision: July 15, 2016

Bharti Retail Ltd., New Delhi & another

...Petitioners

Versus

Ashok Chawla & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Harjot Singh Bedi, Advocate,
for the petitioners.

Mr.Arun Gupta, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Petitioner-defendants are aggrieved of the impugned order,
whereby application for additional evidence has been dismissed on two
grounds.

This Court, vide order dated 27.4.2016, issued notice of
motion only with regard to seeking permission to place on record the
resolutions by way of additional evidence. The order reads thus:-

“CM No. 8334-CII of 2016

Learned counsel for the petitioners-defendants when confronted on the last date of hearing has placed on record copy of cross-examination of the plaintiffs vide miscellaneous application as Annexure P-10. The same is allowed.

Annexure P-10 taken on record.

CR No. 2663 of 2016(O&M)

On going through the cross-examination, it reveals that admission of the plaintiffs is with regard to the e-mail dated 24.2.2013 whereas the application seeking additional evidence has been moved on account of following two accounts:-

- i) placing on record e-mail dated 24.1.2013.*
- ii) placing on record the resolutions of a person who is purported to have signed the written statement.*

Since the admission in the cross-examination is to the e-mail dated 24.2.2013 whereas additional evidence is sought to place on record e-mail dated 24.1.2013, therefore, there is no merit in the contention of learned counsel for the petitioners to place on record the additional evidence. Accordingly, the contention qua the same is declined.

However, notice of motion is issued regarding seeking permission to place on record the resolutions by way of additional evidence for 30.5.2016.

Dasti as well.

In the meantime, final order shall not be passed”

Mr.Harjot Singh Bedi, learned counsel appearing on behalf of the petitioner-defendants submits that the written statement dated 17.5.2014 was filed by Pankaj Gaur, authorised signatory. Somehow, resolution authorising him to file the written statement could not be placed on record. In order to avoid technical objection under Order 29 Rule 1 CPC, the same is sought to be placed on record. In support of his submission, relies upon the judgment of the Hon'ble Supreme Court rendered in **United Bank of India Versus Naresh Kumar and others,** 1997 AIR (SC) 3.

Mr.Arun Gupta, learned counsel for the respondent-plaintiffs submits that a valuable right has accrued in favour of the respondent-plaintiffs, which cannot be taken away. The lacuna in the evidence cannot be permitted by way of additional evidence. There is no compliance of the expression “despite due diligence” and rightly so, the application has been dismissed.

I have heard the learned counsel for the parties and appraised the paper book.

Since the Court has accepted the prayer of the petitioners vis-a-vis resolutions, I am of the view that in order to avoid technical objection, placing on record the resolutions by way of additional evidence does not tantamount to withdrawing of the admission for filling

up the lacunae. The Hon'ble Supreme Court had an occasion to ponder upon such a fact in view of the judgment cited (supra) and present case squarely falls therein.

For the foregoing reasons, I am of the view that the application of the petitioner-defendants vis-a-vis additional evidence qua resolutions is partly allowed by setting-aside the impugned order with liberty to the respondent-plaintiffs to cross-examine the witness who tenders the resolutions.

Revision petition stands allowed in the aforementioned terms subject to payment of ₹2500/- to be paid to the counsel for the respondents in the High Court.

July 15, 2016
ramesh

(AMIT RAWAL)
JUDGE