

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

Decided on: 31.08.2016

1. CR No.3055 of 2013

Jagmail Singh and another		Petitioners
	Versus	
Guranditta Singh		Respondent

2. CR No.3074 of 2013

Jagmail Singh and another		Petitioners
	Versus	
Guranditta Singh		Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Jagjit Gill, Advocate
for the petitioners (in CR Nos.3055 and 3074 of 2013)

Mr. S.K. Daaria, Advocate for Mr. R.V.S. Chugh, Advocate
for the respondent (in CR Nos.3055 and 3074 of 2013)

REKHA MITTAL, J. (Oral)

This order will dispose of CR Nos.3055 and 3074 of 2013 as identical questions of law and facts are involved for adjudication. For brevity, facts are taken from CR No.3055 of 2013.

Counsel for the petitioners has submitted that the respondent/defendant filed a suit for recovery of Rs.32,700/- on the basis of pronote and receipt dated 21.03.2010. The suit was decreed by the trial Court vide judgment and decree dated 19.03.2012 passed by the Additional Civil Judge (Sr. Division), Talwandi Sabo, assailed in appeal before the First Appellate Court, the appeal was accepted, judgment and decree was set-aside and the case was remanded to the trial Court for decision afresh. During pendency of appeal, an

application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short 'CPC') for leading additional evidence was filed by the petitioners. The application was not decided on merits by the Appellate Court but the petitioners were left at liberty to file an application for additional evidence before the trial Court with a direction that if such an application is filed by the petitioners, the same shall be decided as per law after hearing both the parties. It is further argued that after remittance of the matter to the trial Court, the instant application (Annexure P-3) for additional evidence was filed and the same has been wrongly and illegally dismissed by the trial Court. It is argued that in case the petitioners are not permitted to adduce additional evidence, it would be of serious consequence for them, therefore, the impugned order may be set-aside and the petitioners may be permitted to adduce additional evidence as prayed for.

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that as the facts incorporated in the application for additional evidence sought to be proved by way of additional evidence are not a part of the pleadings, the trial Court has rightly refused to exercise its discretion in favour of the petitioners.

I have heard counsel for the parties, perused the paperbook particularly the application for additional evidence and the order impugned.

Counsel for the petitioners, on a pointed query raised by the Court has fairly informed that the facts incorporated in the application (Annexure P-3), sought to be proved by way of additional

evidence, are not a part of the written statement filed by the petitioners/defendants. As the petitioners have not raised any such plea in the written statement, there is no question of evidence sought to be adduced by way of additional evidence being necessary and relevant for complete and effective adjudication of the matter in controversy. That being so, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petitions fail and are accordingly dismissed. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

31.08.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No