

Civil Revision No.4897 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4897 of 2016

Date of Decision: 2.8.2016

Jagjit Singh

---Petitioner

versus

Jaswant Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vikas Soni, Advocate
for the petitioner**

Rekha Mittal, J.

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 11.7.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Ludhiana.

The petitioner has filed a suit for possession by way of specific performance of agreement to sell dated 15.11.2004 in respect

of house measuring 1200 square yards, detailed in head note of the plaint with a consequential relief of permanent injunction. The petitioner/plaintiff filed the instant application under Section 151 of the Code of Civil Procedure (in short “CPC”) for permission to adduce additional evidence for examining official witnesses, detailed in sub paras 1 to 3 of para 2 of the application (Annexure P-2) with the averments that evidence of the witnesses is very material, goes to root of the case and could not be produced at the stage of adducing evidence despite due diligence. It is argued that the learned trial court without adverting to any of the submissions made in writing and placed on record on pages 38 to 56 has dismissed the application by confusing the matter as if the petitioner wanted to adduce evidence qua additional issues No. 2 to 5 whereas onus to prove issue No. 2 was laid upon the petitioner. It is further submitted that additional evidence can be allowed at any stage of the proceedings as the procedural law is subservient to administration of substantial justice. It is further argued that in case, the petitioner is allowed to examine the

witnesses by way of additional evidence, no prejudice would be caused to the respondent who would get an opportunity to cross examine the witnesses besides right to lead evidence in rebuttal. The last submission made by counsel is that the impugned order may be set aside and the matter be remitted to the trial court for decision of the application afresh after addressing to the various factual and legal contentions raised in the written submissions.

I have heard counsel for the petitioner, perused the paper book particularly the order impugned.

The order passed by the trial court does not make reference to any written submissions made before the court below. On the contrary, it appears that the court heard the arguments and disposed of the application. However, I have examined merits of the application filed by the petitioner. In para 2 of the application, the petitioner sought to examine concerned official from the office of HRC in the office of Deputy Commissioner, Ludhiana alongwith original register of Stamp Vendor Sh. Pawan Kumar regarding purchase of stamps by

Jaswant Singh against entry No. 19088 dated 11.11.2004 with a purpose to prove truth in the version of the defendant/respondent and also to prove the relevant entry. The other witness is from the office of GP Fund Branch in the office of Deputy commissioner, Ludhiana with records of GP Fund account No. 218 in the name of Paramjit Singh son of Jaswant Singh to disprove stand of the defendant that he was in need to borrow money due to scarcity of funds. Similarly, a clerk from the Union Bank of India, Branch Phullanwal, Ludhiana alongwith bank statement pertaining to account of Jaswant Singh was sought to be proved for the same purpose.

Before amendment of the Code of Civil Procedure (in short “the Code”) by Amendment Act, 1999 applicable with effect from 1.7.2002, the Code contained Rule 17-A of Order 18 permitting a party to produce evidence not previously known or could not be produced despite due diligence. In order to avail benefit of the said provision, a party was required to satisfy the requirement that despite exercise of due diligence, evidence could not be produced by him at

the time when he was leading evidence. In the case at hand, though there is an averment in para 4 of the application that the evidence was not to the knowledge of the petitioner/plaintiff or could not be produced despite due diligence but there is not even a whisper as to how the said evidence has come to knowledge of the petitioner. Once the legislation in its wisdom has deleted the provisions of Rule 17A by way of amendment, a party cannot be allowed to invoke the provisions of Section 151 CPC without satisfying the court about the aforesaid two requirements. This part, the petitioner has already adduced his evidence in affirmative. The plaintiff cannot be allowed to lead evidence in rebuttal on issues, the onus whereof lies upon the plaintiff. The plaintiff cannot be allowed to adduce rebuttal evidence to prove that certain facts stated by the defendant are incorrect. Even otherwise, if such a practice is accepted much less legalised, there would be no end to the litigation. In this view of the matter, contention of the petitioner that the order impugned warrants intervention is devoid of merit and accordingly rejected.

For the foregoing reasons, the petition fails and is dismissed. Nothing stated in this order shall cause prejudice to either of the parties at the time of final disposal of the suit on merits.

(Rekha Mittal)
Judge

2.8.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No