

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 4956 of 2015**

**Date of Decision: 26.05.2016**

Shanti Devi

... Petitioner(s)

Versus

The Union of India and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | <b>Yes</b> |
| 2  | To be referred to reporters or not?                                   |            |
| 3  | Whether the judgment should be reported in the Digest?                | <b>Yes</b> |

Present: Mr. Surinder Thakur, Advocate  
for the petitioner(s).

Mr. Anil Chawla, Advocate  
for respondents No.1 & 2.

Mr. Sarabjit Singh Hira, Advocate  
for respondent No.3.

**Shekher Dhawan, J.**

Present petition under Article 227 of the Constitution of India for setting aside the order dated 15.7.2015, passed by learned Civil Judge (Junior Division), Hoshiarpur, whereby application, filed by the petitioner/plaintiff for leading additional evidence so as to examine the concerned Clerk of J.B.Hospital, Banga Road along with death record of deceased daughter of Neelam Rani, who was born in the year 2010 and

second daughter of Neelam Rani, who was born on 14.11.2014, was dismissed.

Relevant facts of the case that petitioner had filed main suit for declaration that plaintiff is legally entitled for all the service and pensionary benefits payable to deceased Mahavir Singh and Neelam Rani (defendant No.2) has no relation with the plaintiff or her family members. She had struck down all her relations permanently with the plaintiff and other family members and now she is permanently settled in her parental house. More so, defendant No.3 already married to Jasbir Ram son of Gurnam Dass resident of village Ghuman, District Nawanshahr on 1.7.2009. However, Neelam Rani, during her cross-examination, refused to admit her marriage with abovesaid Jasbir Ram and also refused to admit the birth of female children born to her from the loins of Jasbir Ram. In order to prove this fact, petitioner moved an application so as to summon concerned Clerks from J.B.Hospital, Bang Road Phagwara as well as Civil Hospital, Phagwara along with respective records.

The application was opposed by defendants No.1 to 3 on the ground that these facts were well within the knowledge of the petitioner right from the beginning and the additional evidence is not required for the decision of the case.

The Court below, after considering all these facts, dismissed the application for additional evidence on the ground that application has been filed when the case is already at the final stage after conclusion of evidence of both the parties. The Court below has also observed that defendant No.3 has categorically denied her marriage in the written statement itself and

present application was dismissed with costs of ₹ 500/-.

Learned counsel for the petitioner submitted that additional evidence to be led is most relevant for the just decision of the case because the factum of second marriage was denied by Neelam Rani in her cross-examination.

Learned counsel for the respondents submitted that the Court below has rightly declined the application and present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that application for leading additional evidence was filed at much belated stage i.e. after conclusion of evidence by both the parties. The factum of re-marriage of Neelam Rani was in the pleading right from the beginning. If at all, petitioner wanted to prove the factum of two female children having been born out of wedlock of Neelam Rani and Jasbir Ram, petitioner was required to lead such an evidence when due opportunity was given to her.

As per amended provisions of the Code of Civil Procedure, 1908 there is no provision for leading additional evidence. At the same time such power can certainly be exercised by the Court below while exercising the power under Section 151 CPC and Order 18 Rule 2 CPC. For that purpose, petitioner has to make out a case that party is entitled to lead additional evidence. For that purpose, petitioner has to establish that evidence to be led by way of additional evidence is most relevant for the just decision of the case and that despite due diligence, it could not be led when the party was given due opportunity. But in this case, both these points are

against the petitioner.

However, in the case in hand, the factum of re-marriage of Neelam Rani was well within the knowledge of the petitioner at the time of commencement of the trial.

If at all, petitioner wants to examine these official witnesses from J.B.Hospital and Civil Hospital, Phagwara, such an evidence should have been led at the earlier point of time. More so, keeping in view the nature of main suit, suit for declaration has been filed to seek declaration that petitioner is legally entitled to service benefits of Mahavir Singh after his death and Neelam Rani, widow of Mahavir Singh was not entitled to receive his service benefits and for that purpose, the proposed additional evidence was not of much relevance. The Court below has rightly considered these facts while passing the order under challenge and there is no merit in the present petition and the same is hereby dismissed.

**(Shekher Dhawan)**  
**Judge**

**May 26, 2016**  
“DK”