

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

**CR No.5128 of 2016 (O&M)
Decided on: 11.08.2016**

Kanwaljit Singh		Petitioner
	Versus	
Virsa Singh		Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. K.B. Raheja, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition lays challenge to order dated 03.08.2016 (Annexure P-3) passed by the Additional Civil Judge (Sr. Division), Guruaharsahai whereby application of the respondent/plaintiff for producing a fresh affidavit by way of additional evidence has been allowed.

Counsel for the petitioner/defendant would urge that as the respondent/plaintiff voluntarily closed his evidence on 16.07.2014 and thereafter, evidence of the petitioner/defendant has also been closed and the arguments have also been heard by the Court below, the Court was not competent to allow an application for additional evidence by permitting the respondent/plaintiff to tender into evidence his affidavit by way of additional evidence. In support of his contention, he has relied upon judgment of the Delhi High Court “**Mukesh Gulati vs Suraj Prakash Chauhan and others**”, 2016(1) CivCC 483. Reference has also been made to judgment of the Allahabad High Court “**Pramod Kumar vs Additional District Judge, Bijoner and others**”, 2011(2) RCR (Rent) 440.

I have heard counsel for the petitioner, perused the records

particularly the application (Annexure P-1), reply thereto and the order impugned.

The respondent/plaintiff filed the application on the premise that due to a *bona fide*/inadvertent mistake, affidavit was not got signed from the applicant and was tendered into evidence. During cross-examination, this defect was not pointed out by counsel for the defendant/petitioner and this mistake came to light only during arguments and as such the applicant/plaintiff may be allowed to place on record duly signed and attested affidavit of the applicant.

The learned trial Court, on due consideration of rival submissions made by counsel for the parties, has allowed the application with the observations that if the plaintiff is permitted to tender duly signed attested affidavit by way of additional evidence, no prejudice would be caused to the opposite party. Further held that it is a settled position in law that technicalities should not come in the way of justice.

Counsel for the petitioner/defendant, before the trial Court submitted that the application has been filed to tender fresh affidavit at the stage of rebuttal evidence after availing 27 opportunities to lead evidence in affirmative. This contention of counsel for the petitioner/defendant before the trial Court falsifies contention raised before this Court that the application was filed after the parties have already addressed arguments much less the case being adjourned for orders. That being so, the petitioner cannot derive any advantage to his contention from the two judgments cited by counsel.

There cannot be any quarrel with settled position in law that technicalities cannot be allowed to stand in the way of substantial justice. The respondent/plaintiff tendered into evidence his affidavit Ex.PW-1/A by way of examination-in-chief but it was noticed at the stage of case being mature for final arguments that the said affidavit is not signed by the deponent. Though, it is surprising that neither the Oath Commissioner/Notary who attested the affidavit nor counsel for the respondent/plaintiff noticed this glaring lapse at an appropriate stage of the proceedings, plea of the respondent/plaintiff that the affidavit was not got signed from him due to a *bona fide*/inadvertent mistake gets substantiated from the fact that had it been noticed by the respondent or his counsel, this mistake could be easily rectified either at the time of tendering the affidavit in evidence or at a subsequent stage before evidence of the respondent was closed. In case, the respondent is not permitted to rectify this mistake, it would be of serious consequence by discarding his statement altogether. In the given facts and circumstances, I do not find any reason to interfere in the discretion exercised by the trial Court when otherwise additional evidence that goes to the root of the case can be allowed to be adduced at any stage of the proceedings.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed *in limine*. No order as to costs.

11.08.2016

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No