

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5425 of 2016 (O&M)

Date of decision:02.09.2016

Divya Jyoti Jagrati Sansthan

... Petitioner

Vs.

Jarnail Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.S.Khurana, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner-defendant No.6 is aggrieved of the impugned order dated 17.02.2016, whereby, an application seeking cross examination of the plaintiff's witnesses, has been declined.

Mr. P.S.Khurana, learned counsel appearing on behalf of the petitioner/defendant No.6 submits that he was the subsequent vendor and impleaded subsequently on an application and the Court allowed him to continue with the proceedings from the date when the suit was slated. The aforementioned order was challenged on the premise that he should have been given liberty to file written statement and cross examine the witnesses but the same was declined which was challenged before the Court, vide CR No.5724 of 2015 and this Court while disposing of the aforesaid revision petition, gave a liberty to the petitioner to lead evidence by filing affidavit and with a direction to the trial Court that evidence led by the petitioner

shall be taken into consideration while adjudicating the dispute between the parties to the lis, dehors of the stand taken in the written statement. He also submits that the respondent-plaintiffs have actually not examined the attesting witnesses of the agreement to sell but some other persons who alleged to have impersonated them. It is in this background of the matter, it is essential and necessary for seeking permission of the Court for cross examination of the witnesses.

I have been informed that against the order indicated above, SLP (Civil) No.32380 of 2015 is stated to have been filed, wherein, notice of motion has been issued. The order dated 02.09.2015 passed by this Court reads thus:-

“The challenge in the present petition is to the impugned order dated 26.8.2015(Annexure P-4) whereby the application filed by the petitioner by invoking the provisions of order 1 Rule 10 CPC has been allowed and the petitioner has been permitted to join from the stage the suit was slated.

Learned counsel for the petitioner submits that the stage of the suit is at plaintiff's evidence. Since the petitioner is a bona fide purchaser of the suit property vide sale deed dated 3.9.2012, in a suit filed on 18.5.2010 seeking specific performance of the agreement to sell dated 31.8.2007, the petitioner has an apprehension that the evidence sought to be lead on his behalf would not be taken into consideration for want of written statement.

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

Vide impugned order the petitioner has been allowed to join the proceedings in the suit from the stage it was slated for. The petitioner shall be at liberty to lead the evidence by filing affidavit which shall be looked into by the trial court for the purpose that the respondents-plaintiffs have sought alternative relief for refund of earnest money. Thus, the apprehension of the petitioner, in my view is misplaced.

It is made clear that any evidence filed by the petitioner shall be taken into consideration by the trial court while adjudicating the dispute between the parties to the lis dehors of written statement.

The impugned order is upheld. The revision petition stands disposed of.”

A situation had arisen that the petitioner could have led the evidence by summoning the same very witnesses as his own witnesses or evidence to show that he is impersonated and this would help him in getting the relief or grievance vindicated. I cannot lose the side of the fact that the aforementioned witnesses have already been examined by the original vendor. Instead of choosing the aforementioned remedy, chosen to file the application in hand.

In view of the aforementioned situation, learned counsel for the

petitioner seeks permission of the Court for withdrawal of the present revision petition, as well as, application before the Court below.

Ordered accordingly.

(AMIT RAWAL)
JUDGE

September 02, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No