

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

**CR No.6016 of 2016  
Decided on: 23.09.2016**

Manmohan Singh

....Petitioner

Versus

Amar Kaur (since deceased) through LRs Harmohan Singh and another

....Respondents

**CORAM: HON'BLE MRS JUSTICE REKHA MITTAL**

**Present :** Mr. Gurcharan Dass, Advocates  
for the petitioner.

**REKHA MITTAL, J.**

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 05.09.2016 passed by the Civil Judge (Jr. Division) Ludhiana, whereby application under Section 151 of the Code of Civil Procedure (in short 'CPC') filed by the petitioner for summoning the witnesses has been dismissed.

Smt. Amar Kaur – respondent now represented by her LRs filed a suit for possession by way of specific performance of an agreement dated 24.12.1987 in regard to property bearing No.67-I situated at Kartar Singh Sarabha Nagar, Ludhiana. The respondent/plaintiff closed her evidence on 04.01.2013. The petitioner filed an application for summoning the witnesses, deposited Rs.2,250/- as diet money, examined certain witnesses and evidence was closed by the petitioner on 23.02.2015 in view of statement of Sh. L.D. Gupta, Advocate, counsel for the petitioner/defendant No.1. The instant application was filed by the petitioner on 31.08.2016 for additional evidence in order to summon and examine the witnesses mentioned at

Sr. Nos.3 to 5 of the application filed on 14.03.2013 (Annexure P5) and the same has been disallowed by the trial Court.

Counsel for the petitioner has submitted that as the witnesses sought to be examined by way of additional evidence were mentioned in the list of witnesses and even their expenses were deposited in pursuance of an order passed by the trial Court on the application (Annexure P5) but their examination could not be conducted at an appropriate stage of the proceedings due to oversight and inadvertence of Sh. L.D. Gupta, Advocate who closed the evidence on 23.02.2015, a serious prejudice is likely to be caused to the petitioner, in case he is not permitted to adduce the relevant evidence. In addition, it is argued that neither mistake committed by a counsel nor delay in filing application for additional evidence can enure to benefit of the respondent and disadvantage to the petitioner as respondent can well be compensated with costs for delay, if any, attributable to the petitioner.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to extract a relevant part of the order impugned, reads thus:-

*"..... In the case in hand as well, defendant No.1 was well within the knowledge of the witnesses to be examined by him and no explanation has come forth as to why those witnesses were not examined. It would not be out of context to mention here that Sh. L.D. Gupta and Sh.*

*Narotam Ghai, Advocate has filed power of attorney on behalf of defendant No.1 in the present case, but the entire case was pursued by Sh. L.D. Gupta, Advocate only and witnesses were also cross-examined by him only and now, the present application has been filed by Sh. Narotam Ghai, Advocate pointing out the inadvertence and oversight of Sh. L.D. Gupta, Advocate".*

Counsel for the petitioner has not disputed the factual findings that neither the application for additional evidence was filed by Sh. L.D. Gupta, Advocate nor an affidavit of Sh. L.D. Gupta, Advocate was filed in support of the application in regard to his oversight or inadvertence. This fact alone is sufficient to conclude that the averments raised in the application with regard to oversight or inadvertence of Sh. L.D. Gupta, Advocate are not well-founded or free from *bona fide*, sufficient to deny discretion of the Court in favour of the petitioner.

The application filed by the petitioner does not satisfy the requirements of Order 18 Rule 17-A (now stands deleted by way of Amendment in the year 2002). The legislature deleted order 18 Rule 17-A CPC with an intent to expedite conclusion of trial by the Court. I am afraid if jurisdiction under Section 151 CPC by way of inherent power can be more than what was envisaged under Order 18 Rule 17-A CPC. I would hasten to add that this Court is not oblivious of the fact that despite deletion of Order 18 Rule 17-A CPC, additional evidence can be allowed to be adduced in exercise of inherent jurisdiction under Section 151 CPC.

The order passed by the trial Court makes reference to the

judgments of this Court ***“Lakhbir Singh and others vs Kesar Kaur and others”***, 1984 Current Law Journal 599 and ***“Punjab Water Supply & Sewerage Board vs M/s. Surindera and Company”***, 2002(3) RCR (Civil) 80 relied upon by counsel for the respondents. In ***Punjab Water Supply & Sewerage Board's case (supra)*** this Court held that basic ingredients of Order 18 Rule 17-A of the Code have not been satisfied by the objector-petitioner showing that the additional evidence was either not in his knowledge or after exercise of due diligence, it could not be produced by him at the time when he was leading his evidence. Moreover, the objector-petitioner has failed to disclose the details showing relevance of Annexures I to XXVI with controversy raised before the Court.

In ***Lakhbir Singh and others case (supra)*** it was held that the fact that counsel was negligent in discharge of his duties is no ground for permitting additional evidence. The order of the learned trial Judge cannot said to be without jurisdiction. He had exercised the discretion vested in him in accordance with provisions of Rule 17-A, Order 18, Civil Procedure Code. In ***“Jagir Chand vs Jagsir Singh”***, 1999(4) RCR (Civil) 295, this Court on a detailed consideration of the matter and various judgments of this Court as well as Hon'ble the Supreme Court has held that no sufficient cause was shown for not producing these documents at the earlier stage of the suit. The case is now pending in the trial Court at the stage of final arguments. The documents were within the knowledge of the petitioner and defendants and the revision petition was dismissed.

As has been noticed hereinbefore, the averments in the application with regard to inadvertence or oversight of counsel do not find corroboration by way of an affidavit. This apart, inadvertence or oversight of a counsel, if held to be justifying reason, there may not be a single case in which application for amendment of pleadings or adducing additional evidence can be rejected because it is difficult to verify its correctness or otherwise. Even otherwise, such a plea renders doubtful as evidence was closed on 23.02.2015 and the application for additional evidence was filed in August, 2016. Furthermore, as the petitioner has alleged that the stamp paper on which the agreement has been prepared does not bear her signatures/thumb-impressions at the endorsement *qua* its purchase and the contesting party (plaintiff) has not examined the stamp vendor to prove that the stamp paper was purchased by the petitioner, it is difficult to comprehend as to how evidence sought to be adduced by way of additional evidence is relevant much less material for complete and effective adjudication of the matter in controversy, I would hasten to add that a party to the *lis* is not required to lead negative evidence. Analyzed from any angle, I do not find any reason to intervene in the discretion exercised by the trial Court negating plea of the petitioner.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*.

**23.09.2016**  
*yakub*

**(REKHA MITTAL)**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No