

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6434 of 2015

Date of Decision: 30.05.2016

Banta Singh (Now deceased) through his Legal Representatives
... Petitioner(s)

Versus

Subhash Chander
... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Harmandeep Singh Sullar, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 9.7.2015, passed by learned Civil Judge (Junior Division), Ambala, whereby application, filed by the petitioner/defendants for seeking permission to lead additional evidence, was dismissed.

Learned counsel for the petitioners submitted that petitioners wanted to produce affidavit for getting the presence of Banta Singh (deceased) marked before the Sub Registrar. The said affidavit was got attested in token of presence marked before the Sub Registrar, Ambala on 21.4.2008, which was duly attested by Executed Magistrate, Ambala. The

Court below declined the said prayer without any reason.

Having considered the submissions made by learned counsel for the petitioner and appraisal of the record of the case and the impugned order, this Court is of the considered view that application for leading additional evidence was filed at a stage when the trial had already commenced and issues had been framed and both the parties already led their respective evidence. The case was at the final stage i.e. rebuttal evidence, if any and arguments. Undisputedly, the evidence, which the petitioners want to lead was in existence when the party was given due opportunity to lead the evidence as the affidavit is dated 21.4.2008 and petitioners could certainly prove the said evidence when due opportunity was given. But that has not been done in the present case.

In the light of that, as per amended provisions of the Code of Civil Procedure, 1908, there being no provision for leading additional evidence, certainly it is not a case where additional evidence was to be allowed by the Court below and reasons for declining the said prayer are more than one. Firstly, the evidence, which the petitioners want to produce by way of additional evidence, was in existence much earlier and to the knowledge of the petitioners. Secondly, if petitioners had exercised due diligence, the said evidence could have been produced when due opportunity was given. Thirdly, the case is at the final stage of hearing. Fourthly, there being no provision in the Code of Civil Procedure for leading additional evidence. Needless to say that the Court can allow any evidence to be led, if it considers that evidence was relevant and the party could not produce the said evidence despite exercising due diligence. Such a power always vests in

the Court under Section 151 CPC. But even that is not a case before the Court below for exercising powers under Section 151 CPC. That way, the Court below has rightly dismissed the application for leading additional evidence.

Resultantly, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

May 30, 2016
“DK”