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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7381-2010 [O&M]

Date of Decision : March 16th, 2016

Smt. Bidya Devi Aggarwal

.... Petitioner

Versus

Narender Kumar Aggarwal and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr.R.K.Gupta, Advocate,
for the petitioner.

Mr. C.B.Goel, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 4.9.2010 [Annexure P/1], whereby, Smt. Bidya Devi [Plaintiff No.2] was ordered to produce the following documents for the purpose of cross-examination:-

- (i). Original sale deeds of the properties, which were jointly purchased by father of plaintiff as well as father of defendant No.1 and defendant No.1 and brother of defendant No.1, which are situated at Hisar, Gorakhpur and Mainagauri [W.B.]
- (ii). Income tax/Wealth Tax Returns and orders in respect of the aforesaid properties of all the plaintiffs.

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- (iii). Purchased deeds of the properties which were owned and possesses by all the plaintiffs.
- iv). Succession Certificate or letter of probate of the moveable/immovable properties left by her father.
- v). Partnership deed of the business.
- vi). Distribution of the properties/assets of late Sh. Bhag Chand and Sh. Sita Ram.
- vii). The bank accounts of the plaintiff and the bank accounts and pass books of late Sh. Bhag Chand for the period 1990 till his death.

2. Learned counsel for the petitioner submitted that the petitioner had stepped into the witness box for cross-examination on 14.04.2010 and on the request of respondents, cross-examination of the witness was deferred in order to delay the proceedings. Thereafter, cross-examination was deferred to 9.6.2010. On 9.6.2010, the witness had to come from Bangalore to face the cross-examination, which was conducted for hours together running into more than 10 pages and still the cross-examination remained inconclusive and same was deferred on the ground that witness was to produce some documents. The matter was adjourned to 31.7.2010 for further cross-examination. On 31.7.2010, the witness was again cross-examined for hours together and the case was posted for 9.10.2010. The petitioner is an old lady of about 61 years and had to travel from Bangalore for the purpose of cross-examination. Apart from irrelevant questions being put to her in the cross-examination, the respondents had adopted delaying tactics to harass the old lady in order to delay the proceedings unnecessarily.

3. On 31.7.2010, the respondent moved an application for seeking

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directions from the Court below to the present petitioner for producing above mentioned documents for the purpose of cross-examination. The petitioner filed her reply to the same and the Court below passed the impugned order dated 4.9.2010 [Annexure P/1]. The Court below passed the order for production of documents while ignoring the fact that the documents were not relevant for deciding the matter in dispute. Respondent No.1 had alleged in the written statement that there was some family settlement arrived at between the parties in the year 1986 and there was some litigation in that regard. Though, respondent No.1 must be having copy of the alleged family settlement, yet the application was moved for placing the documents on the file. The Court below failed to appreciate the list of documents as mentioned in the application and, therefore, prayed that the impugned order be set-aside.

4. Learned counsel for respondent No.1 submitted that there was no intention on the part of the respondent to delay the proceedings of the case and as directions have already been issued to the plaintiff to produce the documents, the respondent is ready to complete the cross-examination expeditiously. There is no illegality in the impugned order dated 4.9.2010 and the present petition be dismissed.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the Court below has not taken note of the fact that cross-examination was being deferred on different dates while ignoring the fact that the witness had to come from Bangalore. The Court below should have been conscious to complete the cross-examination on single day or on the subsequent date and not to allow the cross-examination to be continued for unreasonable period and at

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the same time and not to allow any irrelevant question to be put to the witness.

6. Vide impugned order dated 4.9.2010, the Court below has directed the petitioner to produce the above mentioned documents, extracted in para No.1 of this order, whereas, the Court below has not applied its judicious mind while passing the order that such a list of documents should have been placed on the file before commencement of cross-examination that the plaintiff was required to bring the said documents. Such a view was taken by Hon`ble Gauhati High Court in **Nepal Das and Anr. Vs. Aditi Deori and Ors 2012 (6) R.C.R. [Civil]**

1500. Para Nos. 55 to 57 of the said judgment are extracted below:-

“55. Any time after the issues are framed, if any of the parties to the suit, the plaintiff or the defendant, seeks to produce any document as evidence, he must disclose to the Court as to how the document is relevant, why the document could not be produced earlier, why the document was not given in the list of documents, while presenting a plaint or written statement, as the case may be, and why leave of the Court was not obtained for producing the document or calling for production of document at a later stage of the suit. If a document is not included in the list, which is required to be presented along with the pleadings, namely, plaint or the written statement, the Court may not allow, particularly, when it is satisfied that introduction of such a document is irrelevant or would delay the trial or cause any prejudice. It is, however, not enough for a party, or even a Court, to merely say Page No. 21 that prejudice would be caused if the document is not allowed to be introduced. A party, who seeks introduction of a document at a belated stage, must satisfy the Court that introduction of the document would, if not allowed, cause prejudice and it was for reasons beyond his control or power that the document could not be produced earlier nor could the document be included in the list of documents, which was required to be filed at the time of presentation of the plaint or written statement, as the case may be. Similarly, the party, who contends that it would cause prejudice to him if the

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document is allowed to be filed, has the obligation to show as to how his case would be prejudiced.

56. Merely contending by either of them that prejudice would be caused would not be enough unless they can demonstrate the same by assigning reasons therefor. Even when a Court allows a document to be introduced at a belated stage on the ground that not allowing the document to be produced would cause prejudice, the Court must assign reasons therefor and, similarly, if a Court refuses to allow introduction of a document, at a belated stage, it must assign reason as to why it has come to such a conclusion that the documents shall not be allowed to be filed or called for. What is, however, of immense importance to bear in mind is that merely because prejudice may not be caused, a document cannot be allowed to be introduced unless the party, seeking introduction of the document at a belated stage, satisfies the Court that it has exceptional and special reasons for its inability to file the document, which, though ought to have been filed, could not be filed at an earlier stage.

57. Procedural law is, no doubt, handmaid of justice. This does not, however, mean that procedural law is not to be followed. It would, therefore, depend on the party, who seeks production of a document, if issues have already been framed, to show as to why such a document be allowed to be produced, though the same was not in the list of the documents, which the party had filed at the time of presentation of his pleadings.”

7. More so, the Court has also not appreciated the fact that the documents, viz. Income Tax/Wealth Tax Returns and the Statement of bank accounts could be proved by summoning concerned officials from the Bank/departments concerned.

8. In view of the above, the order dated 4.9.2010 [Annexure P/1] is hereby set-aside with a direction to the trial Court to look into the nature of each and every document and then to pass specific order and to give direction to the plaintiff-petitioner to bring only those documents, which are

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considered essential for the purpose of cross-examination. The Court below shall complete the cross-examination of the petitioner on day-to-day basis. The present petition stands allowed in the above terms.

**(SHEKHER DHAWAN)
JUDGE**

March 16th, 2016
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