

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6571 of 2015

Date of Decision: 28.03.2016

Raj Kumar

... Petitioner(s)

Versus

Amit Kumar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 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. Baldev Singh Sodhi, Advocate
for the petitioner(s).

Ms. Ekta Thakur, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 6.7.2015, passed by learned Civil Judge (Junior Division), Dera Bassi, whereby application under Section 151 CPC, having been filed by present petitioner so as to tender into evidence additional affidavits of DW.3 Kuldeep Singh and DW.4 Satpal, was declined.

Learned counsel for the petitioner submitted that controversy in the main civil suit, pending before the Court below, is whether plaintiff and proforma defendants No.2 & 3 are the owners in

possession of equal share on the basis of Will dated 16.8.2006 and revenue record being prepared on the basis thereof. As per petitioner, he had already examined himself and also tendered into evidence Kuldeep Singh as DW.3 and Satpal as DW.4. The said fact came to the notice of the petitioner. Application under Section 151 CPC was filed for tendering additional affidavits of DW.3 Kuldeep Singh and DW.4 Satpal was dismissed by the Court below and prayed that the said order be set aside. The additional affidavits of DW.3 Kuldeep Singh and DW.4 Satpal are most essential for the just decision of the case. More so, the case is still at the stage of evidence of defendant/petitioner before the Court below.

Learned counsel for the petitioner also submitted that a party should not be put to suffer because of some lapse on the part of his counsel. While arguing further, learned counsel for the petitioner submitted that as per notice of motion order passed by this Court on 15.10.2015, the trial Court was directed to take the additional affidavits of DW.3 Kuldeep Singh and DW.4 Satpal, but their statement is not being completed by the Court below and present petition be accepted and petitioner be allowed to lead additional evidence by way of tendering into evidence additional affidavits of DW.3 Kuldeep Singh and DW.4 Satpal.

Learned counsel representing the respondent submitted that the Court below has passed the order, which is strictly in accordance with law because additional evidence, which the petitioner wishes to lead, was within the knowledge of the petitioner when due

opportunity was given to him and only thereafter oral evidence of the petitioner was closed. Now the petitioner cannot be allowed to fill up the lacuna by leading additional evidence and present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and the facts of the case that the main dispute is regarding execution of Will and the additional evidence, by way of additional affidavits of DW.3 Kuldeep Singh and DW.4 Satpal, is most relevant and essential evidence for the just decision of the case. It is a settled proposition of law that a party should not be put to suffer because of same lapse on the part of the counsel. More so, the law of procedure is meant for advancement of justice and not to create obstacles for advancement of justice. DW.3 Kuldeep Singh and DW.4 Satpal had earlier stepped into the witness box and the case is still pending for defendant's evidence, though defendant's oral evidence was closed as per the statement of learned counsel before the Court below. More so, if additional affidavits of DW.3 Kuldeep Singh and DW.4 Satpal are taken on record, the respondent shall have due opportunity to cross-examine them on all the material facts including the plea taken regarding non-furnishing of this information when due opportunity was given to the petitioner. However, as the respondent has been put to suffer because of the conduct of the petitioner, resulting into avoidable harassment, the respondent is certainly entitled to be compensated by way of payment of costs.

In view of above, additional evidence of defendant by way

tendering additional affidavits of DW.3 Kuldeep Singh and DW.4 Satpal into evidence are most relevant and essential for the just decision of the case. As per notice of motion order dated 15.10.2015 passed by this Court, petitioner has already tendered affidavits of DW.3 Kuldeep Singh and DW.4 Satpal before the Court below but their statements have not been completed by way of cross-examination and the other party can be well compensated by payment of costs.

Hence, the present petition is accepted and order dated 6.7.2015 is set aside subject to payment of ₹ 10,000/- as costs and it is directed that petitioner shall produce both the above said witnesses for the purpose of their cross-examination and only one opportunity shall be given on the single date and the respondent shall also complete cross-examination of the said witnesses without causing any further delay.

(Shekher Dhawan)
Judge

March 28, 2016

"DK"