

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-6671-2014(O&M)

Date of decision : 08.01.2016

Sushil Kumar

... Petitioner

Versus

Naresh Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms.Ekta Thakur, Advocate
for the petitioner.

Mr. Sanjay Vashist, Advocate
for the respondent.

REKHA MITTAL. J.

The petitioner has invoked Article 227 of the Constitution of India to lay challenge to order dated 26.08.2014 passed by the Civil Judge (Junior Division), Chandigarh, dismissing the application filed by the petitioner (defendant) under Section 151 of the Code of Civil Procedure (in short 'CPC') for permission to tender an additional affidavit of Sushil Kumar by way of examination-in-chief.

Naresh Kumar, respondent (plaintiff) has filed a suit under Section 6 of the Specific Relief Act for possession of first floor and basement of Shop No.292, Motor Market, Manimajra, U. T. Chandigarh. The plaintiff adduced evidence and thereafter the petitioner (defendant) was called upon to lead evidence in rebuttal. The petitioner appeared in the witness box and tendered into evidence his affidavit Ex.DA along with

document Ex. D1 on 14.05.2014 and his cross-examination was deferred. Later, before his cross-examination was conducted, he filed an application under Section 151 CPC for permission to tender additional affidavit by way examination in chief that was disallowed by the trial Court vide impugned order (Annexure P1).

Counsel for the petitioner has submitted that the pleadings of the parties particularly the written statement filed in defence needs to be construed liberally and the right to explain the pleas taken in the written statement should not be scuttled. It is further submitted that even if a party leads some evidence which is beyond pleadings, the same can be ignored at the time of final disposal of the case. No prejudice would be caused to the respondent (plaintiff) in permitting the petitioner to file additional affidavit as he would have the right to cross-examine the petitioner both in regard to original affidavit as well as additional affidavit.

Counsel for the respondent, on the other hand, would argue that scope of examination-in-chief is confined to the facts pleaded by a party in his plaint or written statement as the case may be. No party is allowed to adduce evidence in regard to facts beyond pleadings. The additional affidavit filed by the petitioner contains the facts which are not a part of written statement. He has supported the impugned order with the submissions that the learned trial Court has rightly rejected the additional affidavit being beyond pleadings.

I have heard counsel for the petitioner and perused the records.

There cannot be any quarrel with the submission that pleadings of the parties are to be construed liberally and the Court is not supposed to adopt a pedantic approach in this regard. But at the same time, no party can be permitted to adduce evidence which is beyond pleadings because permitting a party to lead evidence beyond pleadings would neither be in the interest of justice when otherwise it would consume precious time of the Court and the Courts are already over burdened with huge pendency and arrears. Counsel for the petitioner has carried me through the written statement filed by the petitioner but is unable to convince that the evidence sought to be adduced by way of additional affidavit is either a part of the written statement or amounts to explanation of the facts already incorporated in the written statement. In this view of the matter, the Court is unable to subscribe to the contention of the petitioner that he can be allowed to lead evidence by way of additional affidavit as the other party can cross-examine him both with regard to the original affidavit as well as additional affidavit.

For the reasons aforesaid, I do not find any error much less illegality in the impugned order. As a result, the petition is dismissed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

January 08, 2016.
Davinder Kumar