

CR-7255-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7255-2015

Date of Decision: 16.02.2016

Mohan and another

... Petitioner(s)

Versus

Balwan and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. B.S.Rana, Sr, Advocate with
Ms. Anu Singh, Advocate and
Mr. R.S.Arya, Advocate,
for the petitioners.

Mr. C.B.Goel, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J.

Instant civil revision has been filed under Article 227 of the Constitution of the India for setting aside the order dated 30.09.2015 (Annexure P-6) passed by learned Additional District Judge, Panipat whereby application filed by the respondents under Order 41 Rule 27 read with Section 151 Code of Civil Procedure (in short, 'CPC') seeking permission to lead additional evidence has been allowed.

Brief facts of the case are to the effect that respondents herein i.e. plaintiffs had filed civil suit against the present respondents i.e. defendants challenging the judgment and decree dated 03.08.1994

CR-7255-2015

passed in civil suit No.534/1984, titled as 'Balwan Singh vs. Hari Singh' with regard to the suit property. The aforesaid civil suit was decreed by learned trial Court. Feeling aggrieved, the respondents-defendant preferred appeal before learned lower Appellate Court. It was further averred by the respondents that earlier plaintiff No.1 had filed civil suit No.523/1984 in respect of the suit property against Balwan, Hari Singh and Kanshi Ram which was dismissed on 11.03.1987 by the Court of Sh. P.L.Khanduja, the then Sub Judge Ist Class, Panipat and they had mentioned this fact in their written statement. However, their counsel did not ask the respondents to get the certified copies of plaint, order of dismissal dated 11.03.1987 and power of attorney of Hari Singh and Mohan Lal in the above said suit. Their counsel also did not produce the certified copies of written statement filed by Hari Singh, power of attorney of Hari Singh and statement of Hari Singh dated 03.08.1984 recorded in the Court of Sh. R.C.Godara, learned Sub Judge Ist Class, Panipat, in civil suit No.534/84 dated 03.08.1984 which were necessary for the just and proper decision of the case. It was further averred that the respondents, who are villagers and do not know the nitty-gritty of law in producing the above said documents during the trial before learned lower Court and, therefore, they moved application under Order 41 Rule 27 CPC for producing the aforesaid documents by way of additional evidence. Upon notice, the petitioners filed reply to the said application and resisted the same. It was averred in reply that the respondents have already availed many opportunities to lead evidence

CR-7255-2015

before the learned lower Court. The petitioners herein were not cross-examined regarding the earlier suit and documents mentioned in the present application. The documents sought to be produced by way of additional evidence were in the knowledge of the respondents and now they cannot seek permission to produce the same. The learned lower Appellate Court after considering the arguments made by learned counsel for the parties, allowed the application under Order 41 Rule 27 CPC, subject to costs of Rs.3,000/-, vide impugned order dated 30.09.2015. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Learned senior counsel for the petitioners has vehemently contended that the impugned order suffers from illegality or perversity or material irregularities. The respondents had not furnished the details of the civil suit filed by the petitioners. The respondents moved the application in order to fill-up the lacunae or to patch up the weak points in their case and they cannot be allowed for the same, at this belated stage. The respondents have failed to exercise due diligence and fulfil other ingredients required for leading additional evidence in the Appellate Court.

Per contra, learned counsel for the respondents has vehemently opposed the contentions of learned senior counsel for the petitioners and supported the impugned order. He contended that if the respondents are allowed to lead additional evidence, no prejudice would

CR-7255-2015

be caused to the petitioners as they would also be provided opportunity to rebut the same. The respondents specifically mentioned in their written statement with regard to the civil suit pending between the parties. The documents sought to be produced by way of additional evidence are public documents and cannot be manufactured by the respondents themselves.

I have considered the rival contentions of learned counsel for the parties.

Before proceeding further, it would be apposite to reproduce Order 41 Rule 27 CPC which reads as under:

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to the produced, by an Appellate Court, the court shall

CR-7255-2015

record the reason for its admission.”

It is trite to observe that under Order 41 Rule 27 CPC, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similarly nature. It is also well settled that additional evidence cannot be permitted to be adduced so as to fill-up the lacunae existing in the case of applicant/concerned party.

The provision as envisaged under Order 41 Rule 27 CPC contemplates that wherever additional evidence is allowed to be produced by learned Appellate Court, the Court should record the reason for its admission. Admittedly, the documents sought to be produced by way of additional evidence are public documents and their reference has been made in the written statement. Due to inadvertence and negligence of learned counsel for the respondents in trial Court, the said documents could not be produced and it is settled law that for the negligence of counsel, a party should not suffer. Otherwise also, there is a categorical finding by learned lower Appellate Court that the documents sought to be produced are necessary for the just adjudication of the case and the petitioners would not suffer any irreparable loss in leading additional evidence by the respondents, as the petitioners would be afforded

CR-7255-2015

effective opportunity to rebut the same. Learned senior counsel for the petitioners has failed to point out as to how prejudice is caused to them if the respondents are allowed to lead additional evidence.

As a result of above discussion, this Court is of the opinion that the discretion as envisaged with the lower Appellate Court has been rightly exercised, in the interest of justice and just adjudication of the case.

No reason for interference is called for.

Dismissed.

16.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge