

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 745 of 2015

Date of Decision: 04.03.2016

Bishan Singh

... Petitioner(s)

Versus

Gurinder Singh and Another

... 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. K.B.Raheja, Advocate
for the petitioner(s).

Mr. S.K.Singla, Advocate
for the respondent No.2.

Shekher Dhawan, J.

Present petition is challenge to the order dated 19.1.2015, passed by learned Additional Civil Judge (Senior Division), Malerkotla, whereby application filed by defendant No.2-Baldev Singh, seeking permission to prove agreement dated 14.6.2010 by way of secondary evidence, was allowed.

Revisionist has challenged the said order on the ground that petitioner's evidence had already been concluded and at that stage,

application was filed for issuance of direction to him and respondent No.1 to produce on record original agreement dated 14.6.2010. Present petitioner filed reply *inter-alia* taking the plea that no such agreement was ever executed and the application be dismissed. Respondent No.2- Baldev Singh moved an application for granting permission to prove agreement dated 14.6.2010 by way of secondary evidence and the Court below allowed the same without going into the fact that even there was no such pleading in the written statement that such an agreement was ever executed and respondent No.2 cannot be allowed to lead secondary evidence to prove a fact which has not been pleaded as yet. In support of his arguments, reliance was placed upon the judgment rendered by the Division Bench of Chhattisgarh High Court in case ***United India Insurance Co. Ltd. v. Ranipati Kunwar & Others 2013(2) AICJ 153***, wherein a view was taken that evidence, which is beyond pleading, is not permissible and on same point reliance was placed on judgment rendered by the Rajasthan High Court in case ***Subhash Sharma v. Chhinna Ram and Others 2010(88) AIC 438***.

While arguing on this point, learned counsel for respondent No.2 submitted that written statement was filed on 28.4.2010, whereas agreement for which permission was sought to be proved by way of secondary evidence is dated 14.6.2010 i.e. after filing of the written statement. So, there was no question of taking such a plea in the written statement. More so, PW.2-Swarn Singh had admitted the execution of agreement itself and as such there was no question of

dismissal of application for leading secondary evidence and the order passed by the Court below does not require any interference. In support of his arguments, learned counsel for respondent No.2 placed reliance upon the judgments rendered by the co-ordinate Benches of this Court in cases **Anupam Jain v. Smt. Kulwant Gupta (Civil Revision No. 2991 of 2012, decided on 9.3.2015)** and **Prema v. Rajbir 2011(2) LAR 603**, wherein view was taken that admissibility or otherwise of the document is to be seen by the Court concerned at the time of final decision and that is not the deciding factor for allowing or disallowing of application for leading secondary evidence and present petition be dismissed.

Having considered the submissions made by learned counsel for the parties and the view taken by the Division Bench of Chhattisgarh High Court in case **United India Insurance Co. Ltd. v. Ranipati Kunwar (supra)** and Rajasthan High Court in case **Subhash Sharma v. Chhinna Ram (supra)**, this Court is of the considered view that the facts of the present case are somewhat distinctive. Admittedly, agreement dated 14.6.2010 came into existence after filing of written statement on 28.4.2010. Meaning thereby, this plea could not be taken in the pleading by way of written statement. It is also settled law that parties can be allowed to lead evidence in support of their pleadings. As there was no pleading qua agreement dated 14.6.2010, there was no question of allowing of application for leading secondary evidence. In fact respondent No.2 was required to move an application for amendment of written statement on the basis of subsequent agreement

dated 14.6.2010 and thereafter, such an application for leading secondary evidence should have been filed. But unfortunately that has not been done. Even the statement of witness beyond pleading is not admissible and cannot be considered by the Court below. On this point reliance was placed upon the view taken by the Division Bench of Chhattisgarh High Court in case ***United India Insurance Co. Ltd. v. Ranipati Kunwar*** (*supra*).

In view of above, present petition is accepted and impugned order dated 19.1.2015 is hereby set aside being legally not maintainable. However, it is made clear that in case respondent No.2 moves an application for amendment of the written statement, the Court below shall consider the same, in accordance with law and subsequently, if an application for leading secondary evidence is filed before the Court below, the same shall also be considered and decided in accordance with law.

(Shekher Dhawan)
Judge

March 04, 2016

"DK"