

Civil Revision No.7539 of 2016(O&M)

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.7539 of 2016(O&M)

Date of Decision: 23.11.2016

Naranjan Singh

---Petitioner

versus

Pritam Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. HPS Ghuman, Advocate
for the petitioner**

Rekha Mittal, J.

CM No. 23153-CII of 2016

Allowed as prayed for.

Annexure P-7 is taken on record subject to just exceptions.

CM No. 23702-CII of 2016

Allowed as prayed for.

Annexures P-8 and P-9 are taken on record subject to just exceptions.

Main case

The present petition directs challenge against order dated

26.10.2016 (Annexure P-2) and modification of order dated 7.10.2016 (Annexure P-1) whereby application of the petitioner to examine Kulwant Singh by way of additional evidence has been dismissed and the earlier application for additional evidence was allowed subject to the stipulation that the additional evidence is to be adduced by the petitioner at own responsibility, respectively.

Counsel for the petitioner would submit that the trial court allowed the application for additional evidence to examine SHO/MHC, Police Station, Bhadson, Sarpanch of Gram Panchayat of village Mangewal, Mohinder Singh son of Kapoor Singh and concerned clerk, Sanitation Department, Nabha vide order dated 7.10.2016. It is further argued that as two of the witnesses allowed to be examined by way of additional evidence are official witnesses, the petitioner cannot be asked to produce those witnesses in the Court at own responsibility, therefore, the order dated 7.10.2016 may be modified by allowing the petitioner to secure presence of SHO, Police Station Bhadson, concerned clerk Sanitation Department, Nabha, Sarpanch Gram Panchayat village Mangewal through process of the Court though Mohinder Singh son of Kapoor Singh has already been examined. It is further submitted that subsequent application

filed by the petitioner to examine Kulwant Singh by way of additional evidence has been wrongly and illegally dismissed by the trial court.

I have heard counsel for the petitioner, perused the paper book particularly the orders impugned.

The petitioner has filed a suit for permanent injunction restraining the defendants from interfering into his peaceful possession over the suit property, detailed in head note of the plaint. Application filed by the petitioner for additional evidence was allowed vide order dated 7.10.2016. One of the witnesses allowed to be examined by way of additional evidence has already been examined by the petitioner on 15.10.2016, the date to which the case was adjourned after 7.10.2016. Once the petitioner has already taken advantage of the order dated 7.10.2016 by examining Mohinder Singh son of Kapoor Singh, he cannot be permitted to find fault in the order or seek its modification. However, as the petitioner was permitted to adduce additional evidence vide order dated 7.10.2016, the petitioner in the interregnum (between 7.10.2016 to 15.10.2016) filed an application on 10.10.2016 seeking deposit of diet money of the witnesses without disclosing that the petitioner has been allowed to examine these witnesses by way of additional evidence. The said application was allowed

by the trial court in routine permitting the petitioner to deposit diet money of Rs. 900/-. Later, on the basis of application allowing deposit of diet money, even the summons were issued for service of the witnesses and the petitioner has now sought to take advantage of that situation for securing presence of SHO, Police Station, Bhadson and the other witnesses referred to in the application (Annexure P-8) except Mohinder Singh through process of the Court. Keeping in view the facts and circumstances that the application for additional evidence was allowed with the stipulation that the petitioner shall produce additional evidence at its own responsibility coupled with the factum that the application for deposit of diet money does not make reference to the order of additional evidence, the petitioner cannot be allowed to take advantage of the fact that he has been allowed to deposit diet money for summoning the witnesses. However, keeping in view interest of justice, the petitioner is allowed one opportunity to examine SHO, Police Station, Bhadson and Nirmal Kaur, Ex-Sarpanch cum Chairman of Sanitation Committee but subject to the condition that he would ensure presence of these witnesses before the trial court at his own responsibility on the date already fixed i.e. 25.11.2016. So far as the plea of the petitioner with regard to his entitlement to adduce additional evidence

by examining Kulwant Singh, as the petitioner has already been permitted to examine SHO, Police Station, Bhadson to prove the application Mark 'A' and Kulwant Singh has also sought to be examined for proving the said document, the petitioner cannot be permitted to file successive applications for additional evidence. Therefore, I do not find any reason to interfere in the discretion exercised by the trial court dismissing application for additional evidence vide order dated 26.10.2016.

For the foregoing reasons, the petition stands disposed of in the aforesaid terms.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondents in order to avoid inconvenience and incurring expenditure by them. However, if the respondents have any grievance to express, they shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

23.11.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No