

Civil Revision No. 7856 of 2016

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7856 of 2016
Date of Decision: 21.11.2016

Sukhjeet Kaur and others

---Petitioners

versus

Subhash Chander

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rohit Kumar, Advocate
for the petitioners

REKHA MITTAL, J.

The present petition directs challenge against order dated 8.11.2016 (Annexure P-1) passed by the Additional District Judge, Bathinda whereby application dated 23.9.2016 (Annexure P-5) filed by the respondent/plaintiff for adducing evidence has been allowed and the respondent has been permitted to examine the Clerk of Court (COC) alongwith relevant register containing entry regarding filing of suits with effect from 16.7.2012 onwards.

Counsel for the petitioners has submitted that Subhash Chander respondent/plaintiff filed a suit for recovery of Rs. 1,20,400/- i.e. Rs. 70,000/- being principal and Rs. 50,400/- for interest with effect from 25.6.2009 to 24.6.2012 alongwith pendente lite and future interest. The suit was contested by the defendants/petitioners and it ultimately culminated in the judgment and decree dated 29.2.2016 passed by the Civil Judge (Junior Division), Bathinda whereby suit was decreed for recovery of Rs. 70,000/- with costs and interest, detailed in the relief clause of the judgment. The respondent/plaintiff preferred an appeal against the judgment and decree dated 29.2.2016 and filed an application (Annexure P-5) for adducing additional evidence. It is vehemently argued that the Court of Appeal has committed a serious error rather illegality by allowing the application which is contrary to the provisions of Clause (a) and (aa) of Rule 27 of Order 41 of the Code of Civil Procedure (in short "CPC"). It is further submitted that the application was filed by the respondent/plaintiff with an intent to fill up gaps and lacunae in his case, not permissible in law.

I have heard counsel for the petitioners, perused the paper book particularly the order impugned.

There is a serious issue involved in the present lis as to

whether suit filed by the respondent/plaintiff is within limitation or otherwise. The trial court has framed issue No. 4 , “whether the suit is not within limitation ?OPD” and the said issue was answered against the petitioners and in favour of the respondent/plaintiff.

By way of the instant application, the respondent/plaintiff sought to produce additional evidence i.e. the register maintained by the office of the COC regarding filing of civil suits dated 16.7.2012 and 17.7.2012 and to examine the concerned official of the Court. As the evidence sought to be adduced by the respondent/plaintiff would clinch the issue regarding limitation, sought to be proved on the basis of records maintained by the Court itself, the additional evidence has rightly been allowed in view of the provisions of Order 41 Rule 27(b) CPC. I do not find any jurisdictional error much less illegality committed by the appellate court allowing additional evidence in exercise of its discretionary power. However, the Court of Appeal has not provided an opportunity to the petitioners/defendants to lead evidence in rebuttal to the additional evidence to be adduced by the respondent/plaintiff. Hence, the impugned order is modified to the extent that after adducing additional evidence by the respondent/plaintiff, the defendants/petitioners shall be entitled to an

opportunity to lead evidence for the purpose of rebutting the additional evidence.

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

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

(Rekha Mittal)
Judge

21.11.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No