

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.152 of 2016 (O&M)

Date of Decision: 20.01.2017.

Kulbhushan Jain

....Petitioner.

VERSUS

Punjab National Bank

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Deepak Jindal, Advocate for the petitioner.

Mr. Arvind Rajotia, Advocate for the respondent.

SNEH PRASHAR, J.

The petitioner is aggrieved of the order dated 07.08.2015 passed by learned Additional District Judge, Rohtak by virtue of which the application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure (for short, "CPC") filed by the appellant-plaintiff was dismissed.

The facts, that emerge from the record, are that a suit for declaration with consequential relief of mandatory injunction was filed by the appellant to the effect that the fixed deposit No.148432/369/81 dated 23.06.1981 for an amount of Rs.10,000/- lying with the respondent-defendant Bank in his name is free from all lien/liability and that he is entitled to get the maturity amount alongwith interest upto the date of actual payment.

The suit was contested by the respondent-bank. It was submitted that since the plaintiff (petitioner) and its concerns availed various loan facilities and defaulted in repaying the same, the bank was constrained to file various suits for recovering the dues. The suits were filed after adjusting the amount of the fixed deposit.

The suit filed by the petitioner was dismissed by learned Civil Judge (Junior Division), Rohtak by virtue of judgment and decree dated 15.03.2013. The petitioner preferred an appeal and alongwith his first appeal he filed an application invoking the provisions of Order XLI Rule 27 read with Section 151 CPC praying for permission to produce additional evidence. As indicated above, the application was dismissed by learned first appellate Court.

The submissions made by Mr. Deepak Jindal, learned counsel for the petitioner and Mr. Arvind Rajotia, learned counsel for the respondent have been heard.

At the very outset, learned counsel for the petitioner submits that the application filed by the petitioner should have been heard by learned Additional District Judge alongwith the appeal and the dismissal of the application without hearing the appeal was illegal and against law. To support his argument, learned counsel relied upon **Gurnam Singh vs. Saudagar Singh and others, 2005(2) R.C.R. (Civil) 547.**

It was also submitted by learned counsel that the documents which the petitioner intends to tender in evidence by way of additional evidence are public documents and are persi admissible. While some documents had come in existence after passing of the judgment and decree dated 15.03.2013 of learned trial Court, some are very old and could not be

earlier traced by the petitioner despite due diligence. Also the documents are relevant for proper decision of the controversy in question.

Learned counsel for the respondent submits that the documents which the petitioner now intends to bring on record were in his possession. No justifiable reason could be explained for not producing them at the appropriate stage during the course of the case.

It is the case of the petitioner himself that the documents, which he intends to produce during the course of appeal, allegedly relate to the correspondence between him (petitioner) and the respondent-bank. By simply saying that those documents were not traceable earlier was not sufficient to satisfy the requirement that they could not be produced by the petitioner during the course of the case despite due diligence.

The judgment in **Gurnam Singh's** case (supra) was passed on its own facts. It is not the case here that the application of the petitioner for producing additional evidence had been dismissed on the ground that a similar application was filed by him before learned trial Court which was dismissed and no appeal/revision was preferred against the same and therefore, the said order having attained finality, an application for additional evidence could not have been filed during the appeal proceedings.

No doubt, as held by Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, A.I.R. 2005 Supreme Court 3353**, to do substantial justice the Court has inherent power to allow any material evidence to be led by the parties by way of additional evidence unless the application filed prima facie suffers from malafide and amounts to abuse of process of the Court. But if the evidence sought to be

produced by way of additional evidence is found to be not relevant and is such which could have been produced by the applicant at the appropriate stage exercising due diligence, the prayer made for leading additional evidence has to be declined.

In the case in hand, the documents which the petitioner intended to produce by way of additional evidence were admittedly in his knowledge and were also in his possession even before he had instituted the suit. He by his own option had not produced them during the trial of the suit. Moreso, it was observed by learned Additional District Judge in his order that the documents could not be said to be helpful in adjudication for the matter in appeal when filing of the said documents was not felt necessary by the petitioner during the trial. In any case, the documents were not such which could not have been produced by the petitioner during the trial despite due diligence. It appears that only to delay the appeal proceedings the application for producing the documents in additional evidence was filed.

The argument of learned counsel for the petitioner that the application for additional evidence should have been heard by learned Additional District Judge alongwith the appeal and its dismissal without hearing the appeal, was not the ground in the Grounds of Appeal on which the order had been assailed. In any case, when there appears no illegality or perversity in the in the impugned order, it cannot be set aside for this technical reason.

For the reasons aforesaid, finding that the impugned order of learned Additional District Judge does not suffer from any perversity, illegality or jurisdictional error so as to call for interference by this Court in

exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the revision petition being bereft of merit is dismissed.

(SNEH PRASHAR)
JUDGE

20.01.2017.
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No