

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

**CR No.1501 of 2017(O&M)
Date of Decision: 24.10.2017**

Sukhdev Singh and another

.....Petitioners

Vs

Charanjit Singh and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. B.S. Baath, Advocate
for the petitioners.

Mr. M.K. Singla, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have assailed the order dated 23.01.2017 passed by Additional Civil Judge (Senior Division), Khamano vide which application for additional evidence i.e. permission to tender into evidence original site plan and examination of Sh. B.K. Pathak, Draftsman was allowed.

[2]. Plaintiff filed a suit for permanent injunction, restraining the defendants from obstructing the passage of the plaintiff from the suit property which is a public street.

[3]. Plaintiff relied upon a site plan which was opposed by

the defendants on the basis of their site plan tendered along with the written statement. Faced with the situation, the plaintiff wanted to withdraw the suit with a liberty to file fresh one on the same cause of action, but the said application was dismissed by the Civil Judge (Junior Division), Fatehgarh Sahib vide order dated 08.07.2015 with an observation that if the site plan had not been prepared by the draftsman either; the same could have been prepared from the approved draftsman and could have been tendered along with pleadings afterwards or as additional evidence.

[4]. Taking benefit of the aforesaid observation, the plaintiff /respondent filed Civil Revision No.4747 of 2015, which was disposed of by the High Court vide order dated 30.07.2015 by passing the following order:-

“1. The revision petition is against the dismissal of the application for withdrawal of suit. The counsel says that the correct site plan was received by the plaintiff only after the defendant's side was over and when it was the occasion for rebuttal evidence. The document that has to be filed and established is not really in the nature of rebuttal but it is an additional evidence which the plaintiff will have to give. The petitioner is at liberty to file an application for reception of additional evidence and if such an application is filed, the other side will be heard on the objections and the Court will pass appropriate orders.

2. With this liberty, the civil revision is disposed of.”

[5]. In the light of aforesaid order, the plaintiff/respondent filed an application for leading additional evidence to tender the original site plan along with summoning of Sh. B.K. Pathak, Draftsman. The prayer was allowed by the trial Court vide the impugned order with a cost of Rs.2500/-.

[6]. Having heard learned counsel for the parties, I am of the view that the indulgence was granted by the High Court in the revision petition and the plaintiff was given liberty to file an application for reception of additional evidence with a liberty to the defendants to rebut the same. The indulgence granted by the trial Court cannot be faulted with. However, there is a scope for modification in terms of imposition of cost keeping in view the stage at which case is pending. The Court becomes *functus officio* only after pronouncement of the judgment. The case is fixed for rebuttal and arguments. The procedural law is handmaid of justice.

[7]. In view of facts and circumstances of the case, I deem it appropriate not to grant any indulgence on merits, however, the cost imposed by the trial Court needs to be enhanced to the tune of Rs.20,000/- over and above the cost awarded by the trial Court to be paid to the defendants. The payment of cost shall be

the condition precedent for granting indulgence by the trial Court in the aforesaid context.

[8]. Disposed of accordingly.

24.10.2017	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No