

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

CR No.1852 of 2017.

Date of Decision: 16.03.2017.

Dalip Singh

....Petitioner.

VERSUS

Puran Mal and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.N. Lohan, Advocate for the petitioner.

SNEH PRASHAR, J.

Aggrieved by the order dated 02.03.2017 passed by learned Additional Civil Judge (Senior Division), Jhajjar dismissing the application of the petitioner-defendant No.7 for examining a draftsman and a photographer by way of additional evidence, the present petition invoking the provisions of Article 227 of the Constitution of India has been filed.

The submissions made by Mr. R.N. Lohan, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner argued that examination of the draftsman and photographer is necessary for proving the existing state of affairs at the spot. The construction of shops at the spot had been started prior to filing of the suit. Since the construction is nearing completion, it is necessary to examine the draftsman and photographer for showing the actual position at the spot. Examination of the witnesses will not prejudice

legally erred in dismissing his application.

Learned trial Court has mentioned in the impugned order that issues in the case were framed on 30.07.2012 and thereafter adequate opportunities were given for plaintiff's evidence which concluded on 06.05.2013. Subsequent to it, the defendants produced their evidence and concluded the same on 08.01.2014 and since then the case was pending for evidence in rebuttal (if any) and arguments and it is at the said stage that the defendant (petitioner) had filed application for examining a draftsman and a photographer.

The provision of leading additional evidence has since been deleted. However, 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. Otherwise also, if the evidence sought to be produced by way of additional evidence is found to be not relevant and not such which could not have been produced by the applicant at the appropriate stage despite due diligence, the prayer made for leading additional evidence has to be declined.

In the case in hand, the evidence, which the petitioner now wants to lead by way of additional evidence, is not such which he could not have produced despite due diligence when his evidence was going on. The defendants availed adequate opportunities to produce their evidence. If it was necessary to examine a draftsman and a photographer to elucidate the existing state of affairs at the spot or to show some subsequent supervening event, they could have easily examined the witnesses during their evidence.

Moreso, learned counsel for the petitioner has failed to explain how the evidence of the said witnesses is necessary for proper adjudication of the case. When both the parties have already led their evidence and closed the same, there is no ground to allow the petitioner to produce new evidence by way of additional evidence so as to reopen the whole case.

Thus, there being no illegality or perversity in the order of learned trial Court, the instant petition being devoid of merit is dismissed.

16.03.2017.
jitender sharma

(SNEH PRASHAR)
JUDGE

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**