

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2256 of 2017
Date of Order:24.07.2017

Sukhdev Singh (deceased) through LR's

..Petitioners

Versus

Jaspal Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harish Davedi, Advocate,
for the petitioners.

ANIL KSHETARPAL, J.

Defendant-petitioners have filed this revision petition, under Article 227 of the Constitution of India, against order passed by the first appellate Court, dated 20.03.2017, dismissing application for permission to lead additional evidence under Order 41 Rule 27 CPC.

Plaintiffs filed a suit for possession through specific performance of contract/agreement to sell dated 17.02.2005. The suit remained pending for almost six years. Petitioners-defendant contested the suit and took all possible defences including blank stamp papers were got signed, the alleged agreement is fabricated.

After regular trial, the learned trial court decreed the suit filed by the plaintiffs and rejected the defences set up by defendant-petitioners.

Defendant-petitioners filed an appeal on 09.04.2014. On 02.03.2015, an application was filed by the defendant-petitioners for permission to lead additional evidence at appellate stage on the ground that the agreement be permitted to be examined by Hand Writing and Finger

Print Expert and cross-examination of the stamp vendor as well as re-cross-examination of PW4 Swaranjit Singh. The aforesaid application has been dismissed by the learned first appellate Court by recording the following reasons:-

“Keeping in mind, the legal principles so enumerated in the statute and on perusal of the record, it transpired that the appellant/applicant has taken the plead that a whitener has been used to alter the date of agreement which is partially visible from the naked eye and which the earlier counsel has failed to notice. The said reasoning given by the counsel for the appellant/applicant is untenable as this very fact would have been the foundation of the pleadings of the defendant while controverting the stand of the respondent/plaintiff before the trial Court and it is highly improbable that this very fact would have missed the knowledge of the appellant/applicant. The appellant/applicant has failed to show that this very fact was not in his knowledge and he could not produce the said evidence despite due diligence. This very reason would have been the foundation of his pleadings. But the pleadings are completely silent on that aspect and there is no reason put forth by the applicant that why the said fact was not brought before the trial Court. Since there is no pleading of the appellant/defendant to that effect and the petitioner witnesses were not cross

examined with regard to that aspect and even the perusal of the said agreement does not show any such whitener as alleged by the applicant. Hence, there is no merit in the application for additional evidence and the same stands dismissed. Now to come up on 21.03.2017 for final arguments.”

I have heard counsel for the petitioners at length.

Order 41 Rule 27 of the Code of Civil Procedure makes a provision for permission to lead additional evidence on certain grounds.

Order 41 Rule 27 of the Code of Civil Procedure is extracted as under:-

Order XLI XX XX XX

Rule 27. Production of additional evidence in

Appellate Court.(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be

produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

I have considered the arguments submitted by counsel for the petitioners.

In my opinion, learned first appellate Court has rightly dismissed the application as the case set up by the petitioners do not fall within the provisions of Order 41 Rule 27 of the Code of Civil Procedure. Learned trial Court also formed an opinion that the application filed is wholly misconceived because if any whitener has been used that would be visible from the naked eye. Still further no foundation has been laid in the pleadings, to this effect.

Keeping in view the order passed by the learned first appellate Court, I do not find any reason to interfere in the exercise of power under Article 227 of the Constitution of India. The revision petition is ordered to be dismissed.

July 24, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No