

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

Sr. No.: 112

**Civil Revision No.2288 of 2017 (O & M)**

**Date of Decision: May 04, 2017**

Gurbax Singh & another

..... PETITIONERS

*VERSUS*

Basant Singh & others

..... RESPONDENTS

...

**CORAM: HON'BLE MR. JUSTICE JASPAL SINGH**

...

**PRESENT:** - Mr. Aman Sharma, Advocate, for the petitioners.

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**Jaspal Singh, J**

**CM No.9827-CII of 2017**

Application is allowed.

Documents, Annexures A-1 and A-2 are taken on record.

**CR No.2288 of 2017**

1. Challenge in this revision petition is to order dated March 22, 2017 passed by the Civil Judge (Junior Division), Ellenabad, whereby an application preferred by the petitioners – plaintiffs seeking permission to lead additional evidence to examine Clerk and Record Keeper as well as production of relevant material by them, has been dismissed.
2. The contention of learned counsel for the petitioners is that during to pendency of the suit before the trial court, after closure of evidence by both the parties, an information was sought by Gurdev Singh,

brother of petitioner No.1 from the Executive Engineer/ Public Information Officer, Ghaghar Water Services Board, Sirsa on February 22, 2017. In response to the said application, the requisite information was provided by the Officiating Engineer vide letter No.1290/RTI dated March 10, 2017, in which, point-wise reply has been given to the information sought. Since the aforesaid information was necessary for proper adjudication of the matter in controversy between the parties, petitioners preferred an application to examine concerned Clerk/Record Keeper as well as for the proper authentication & exhibition of letter No.1290/RTI (Annexure P-2), but the said application has been dismissed by the trial court vide impugned order dated March 22, 2017. Infact, the trial court has committed a grave error in holding that the fact with regard to fitness of water of river Ghaghar for bathing was never a part of the pleadings and as such, no evidence can be led in order to prove a fact which is beyond pleadings. However, the defendants, from the very beginning in their written statement have taken a specific stand to the effect that water of Ghaghar river is fit for bathing and it was Ganga Singh (son of petitioners) who had gone there for bathing and drowned whereas in paragraph 2 of the written statement filed by defendant Nos.2 and 4, it has been specifically stated that “allegations against the defendants are totally false and fabricated. Defendants neither gave beatings to Ganga Singh nor threw his body in Ghaghar river. They are not responsible for his death. Ganga Singh drowned accidentally while taking bath in the Ghaghar river”. Still, the trial court has ignored this vital fact and dismissed the application. Since the evidence sought to be produced by the petitioners – plaintiffs by way of additional evidence is essential for proper and effective adjudication of the matter in controversy, the same should have been allowed by the trial court. The dismissal of application is

absolutely illegal and against the settled principles. Thus, the impugned order is not sustainable in the eyes of law and deserved to be set aside by way of acceptance of the instant revision petition.

3. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioners and has also scanned the impugned order but does not find any legal and factual substance in the submissions made by learned counsel for the petitioners.

4. The scrutiny of impugned order dated March 22, 2017 which contains the detailed facts, transpires that the application for permission to lead additional evidence is nothing but an outcome of the change of counsel. After availing sufficient opportunities for adducing rebuttal as well as arguments, petitioners changed their counsel before the trial court, who also available sufficient opportunities and subsequently, moved the application under consideration for additional evidence. This fact was very much in the knowledge of the petitioners when defendants filed written statement as well as when the parties led their respective evidence. If at all, the petitioners – plaintiffs could have sought a report earlier and examined the witnesses when the suit was listed before the trial court for their evidence. The collection/production of such evidence subsequent to closure of evidence by the petitioners – plaintiffs appears to be a clever device to fill up the lacunae left in their case which cannot be permitted by way of moving such an application. Thus, this Court does not find any infirmity or perversity in the impugned order, rather the same is absolutely in consonance with the legal proposition of law. Thus, impugned order does not call for any interference by this Court.

5. As an upshot of the aforesaid discussion, finding no merit in the instant petition, the same is dismissed.

6. No order as to costs.

**May 04, 2017**  
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**(Jaspal Singh)**  
**Judge**

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No