

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

CR No. 237 of 2017

Date of decision : 19.05.2017

Buta Singh (deceased) thr. his LR

....Petitioner

V/s

Om dutt

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Rajiv Sharma, Advocate for
Mr. G.S. Chhina, Advocate for the petitioner.

RAJAN GUPTA J.

Present revision petition is directed against the order passed by trial court whereby application filed by petitioner for filing additional written statement has been rejected. It has been urged before the court that initially father of the petitioner was defendant in the suit. He expired during pendency thereof. Petitioner was impleaded as legal representative. He, thus has a right to rebut the stand taken by the plaintiff. He has relied upon judgment reported as *Sumtibai & ors. Paras Finance Co. (2007) 10 SCC 82* in support of his contention.

It appears that plaintiff filed a suit for declaration to the effect that he was owner of the property in question. He also sought mandatory injunction to direct the defendant to remove debris and construction over the site in question. Suit was decreed on 12.02.2013. Plaintiff-defendant filed appeal before the lower appellate court. Additional District Judge, Ludhiana vide his order dated 29.01.2016 remanded the matter to trial court for decision afresh after affording three effective opportunities to defendant to lead evidence. This order attained finality as it was not challenged by either

party. The matter came up before the trial court. At this stage, an application was moved for filing additional written statement. The court below has rejected the plea observing that no such liberty was granted by lower appellate court. I find no infirmity with the order. Detailed written statement was filed by father of the petitioner who was original defendant in the suit. His legal representative (petitioner herein) has been granted further opportunity to lead evidence in light of the pleadings. In my considered view, same would meet the ends of justice. Besides, petitioner was satisfied with the order passed by Additional District Judge, Ludhiana and, thus accepted the same. It is inexplicable why instant application has been moved for filing additional written statement. Ratio of judgment in Sumtibai's case (supra) is not applicable to the facts and circumstances of the present case. Revision petition is, thus without any merit and is hereby dismissed.

May 19, 2017

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No