

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.326 of 2016 (O&M)

Date of Decision: 28.9.2017

Harinder Pal Singh

..Petitioner

Vs.

Harish Kumar and others

..Respondents

CORAM: HON'BLE MRS.JUSTICE REKHA MITTAL

Present: Mr.Akshay Jindal, Advocate for the petitioner.

Mr.Sudhir Paruthi, Advocate for respondents No.1 and 2.

REKHA MITTAL, J.

The present petition directs challenge against order dated 16.12.2015 (Annexure P-5) passed by the Civil Judge (Junior Division) Ambala whereby application filed by the petitioner-plaintiff for additional evidence has been dismissed.

Counsel for the petitioner has submitted that petitioner alongwith Jasmat Singh filed a suit for specific performance of agreement to sell dated 6.10.2004 executed by the defendant in respect of land measuring 136 Kanals situated in village Tamnauli, Tehsil Mulana, District Ambala.

Initially, the date for execution of the sale deed was fixed as 30.4.2005. Subsequently, the target date was extended to 31.5.2005 on the request of defendants/respondents and respondents No.1 and 2 had put their signatures at the time of extension of the target date. It is further argued that

in the written statement filed by the defendants, they have not disputed execution of agreement to sell dated 6.10.2004 though they have denied extension of time in view of averments raised in concluding part of para 5 of the written statement. The parties adduced their respective evidence in support of their rival claims. The petitioner filed the instant application for adducing additional evidence by raising allegations in para 4 of the application Annexure P-3. It is argued with vehemence that examination of Sh.Sanjeev Gupta, deed writer Barara, author of extension of target date vide writing dated 30.4.2005 scribed on the back of first page of agreement to sell is material for just decision of the case as the whole controversy revolves around the issue of extension of target date to 31.5.2005. It is further submitted that the respondents can well be compensated with costs for delay, if any, attributable to the petitioner seeking examination of Sanjeev Gupta at the belated stage of the proceedings.

Counsel representing the contesting respondents has supported the impugned order with the submission that the order passed by the trial Court does not suffer from any patent error warranting intervention in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. It is further argued that neither in the plaint nor in the evidence adduced by the petitioner and his co-plaintiff, it has ever been brought to fore that extension was scribed by Sh.Sanjeev Gupta. Further argued that allegations raised in para 5 of the written statement pertaining to extension of time/target date to 31.5.2005 were specifically denied by the respondents/defendants with the averments that the extension is a manipulated act and signatures of defendants have been misused, therefore,

the plaintiffs knew from the very beginning about stand of the defendants and evidence now sought to be adduced by way of additional evidence in their effort to fill up gaps and lacunae in their case, not permissible in law. In support of his contentions, he has referred to judgment of this Court **Satnam Singh Vs. Devinder Kaur 2006(4) RCR(Civil) 639.**

I have heard learned counsel for the parties, perused the paper book and copies of various documents made available by counsel for the petitioner at the time of hearing.

The petitioner and Jasmat Singh filed the suit for possession by way of specific performance of agreement to sell dated 6.10.2004 in the year 2007. It is not denied that the plaintiffs availed several opportunities scattered over a period of 2-1/2 years in concluding their evidence and examined witnesses including handwriting and finger prints expert. Counsel for the petitioner is not in a position to dispute that neither in the plaint nor during the course of evidence by the plaintiffs, there is any reference that the writing with regard to extension of target date was scribed by Sh.Sanjeev Gupta much less at the instance of defendants/respondents.

To be fair, counsel for the petitioner would state that this fact came on record during cross examination of defendant Rakesh Mohan DW1. I have gone through copy of statement of DW1 but unable to find if any such fact was brought on record in cross examination of Rakesh Mohan DW1. However, in his cross examination, he was asked about certain deed writers working in Tehsil Barara. A relevant extract from his cross examination, in this regard, reads as follows:

“I do not know that Sanjeev, Anil, Pawan, Jasvir etc. deed

writers are there in Tehsil Barara. It is wrong to suggest that I myself/we ourselves got the extension written by calling the scribe and signed it after understanding the same.”

In view of the above, it is difficult to accept contention of the petitioner that factum of extension being scribed by Sanjeev Gupta was brought on record in cross examination of Rakesh Mohan DW1.

Perusal of photocopy of the agreement particularly writing on the back of first page does not make reference to name of the scribe much less an entry being made by the scribe in any records. In the given scenario, it can safely be held that name of Sh.Sanjeev Gupta being scribe of writing pertaining to extension of target date was brought forth for the first time when the instant application for additional evidence was filed at the fag end of trial.

Coming to the application filed for additional evidence, a relevant extract from para 4 thereof, reads as follows:-

“That during the evidence, the defendants have admitted the signature but denied the extension, whereas the defendants themselves have extending the date of execution of sale deed to 31.5.2005, as the said extension was written by Sh.Sanjeev Gupta, deed writer, Barara on the asking of the defendants, so the said person is very much necessary for the proper adjudication of the case. As the defendants have denied the writing the extension in their evidence, as well as shows ignorance of the person who has written the extension. So it is very much necessary to summon the abovesaid person at this stage to clear the position/matter.”

The averments raised in para 4 of the application are beyond pleadings raised in para 5 of the plaint pertaining to extension of date. A

relevant extract from para 5 of the plaint, germane to the controversy, reads thus:

“The plaintiff many times approached to the defendant to get the sale deed executed but the defendants put the matter on and off on one pretext or the other and they requested to the plaintiffs to extend the time for the execution of the sale deed by one month as they have to get clearance from the court and accordingly the date of agreement was fixed to 31.5.2005 by both parties. The defendants have also agreed to extend the date in the written, accordingly the date was extended to 31.5.2005. The defendants No.1 and 2 also put the signature on the extension of the time, but the defendant No.3 who could not be available on that date have not signed on the extension of the time, however, he was fully agreed for the extension of the time alongwith other defendants. The defendants assured to the plaintiffs that they will get the sale deed executed on 31.5.2005 by clearing all the hurdles/obstacles/clearance accordingly the date was extended to 31.5.2005.”

In cross examination of Rakesh Mohan DW1 extracted herein-before, it was suggested that the defendants themselves called the scribe for writing of extension which was denied by the witness. It has never been put to the witness that the writing was scribed by Sh.Sanjeev Gupta, deed writer Barara.

The plaintiffs prayed for adducing additional evidence on the premise that the defendants have denied writing of extension in their evidence as well as shown ignorance of the person, who has written the extension. This plea of the plaintiffs is misconceived for the reason that the defendants in the written statement dated 9.1.2009 Annexure P-2 have specifically denied extension with a categoric plea that extension is a

manipulated act and signatures of the answering defendants have been misused. As the defendants have denied extension with a clear averment that the same has been manipulated and signatures were misused, plea of the plaintiffs that due to denial of extension during evidence of the defendants, necessity to examine Sanjeev Gupta deed writer has emerged is patently false and bereft of truth. This fact alone is sufficient to reject claim of the plaintiffs for adducing additional evidence at the fag end of trial, in exercise of inherent jurisdiction under Section 151 CPC. That being so, I find merit in contention of the respondents that the instant application filed by the plaintiffs is nothing short of an attempt to fill up gaps and lacunae left in the case and the same cannot be permitted by misusing process of law. I would hasten to add that the application filed by the plaintiffs for additional evidence does not satisfy the requirements that either the evidence sought to be adduced by way of additional evidence was not to knowledge of the plaintiffs at appropriate stage of the proceedings or the same could not be adduced despite exercise of due diligence, twin requirements of Order 18 Rule 17-A CPC that stand deleted by way of amendment in the Code with effect from the year 2002. As the application filed by the petitioner even does not satisfy the requirements of provision, specifically enacted for permitting the parties to adduce additional evidence though deleted later with a view to expedite adjudication of cases, it is difficult to accept that such an application can be allowed in exercise of discretionary jurisdiction under Section 151 CPC. In this view of the matter, I do not find any patent error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly

dismissed leaving the parties to bear their own costs.

28.9.2017
Meenu

(Rekha Mittal)
Judge

Whether speaking/reasoned

Whether Reportable

- Yes/No

- Yes/No