

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

Sr. No.120

CR No.4009 of 2017
DECIDED ON: June 01, 2017

M/S DEVANS MODERN BREWERIES LTD

..PETITIONER

VERSUS

M/S TIPIN BANSAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Aman Bahri, Advocate,
for the petitioner.

JASPAL SINGH, J. (ORAL)

Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated April 17, 2017 (Annexure P-8) passed by learned Civil Judge (Jr. Divn.) Gurgaon, whereby an application under Section 151 of the Code of Civil Procedure filed by the petitioner/plaintiff for seeking additional evidence has been dismissed.

2. Undisputably, the statement of account Ex.P-41 was produced on record along with affidavit of Mr. S.V. Sharma, Regional Manager of the petitioner/plaintiff when he appeared in the witness box as PW-1. The said statement of account was exhibited and taken on record without any

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objection. However, during the cross-examination, it revealed that the certificate and C.D. with regard to statement of account Ex.P-41 was required to be produced in compliance of the provisions contained in Section 65-B (4) of the Indian Evidence Act, 1872 (for short 'Act' only). Accordingly, an application for additional evidence was moved but that was declined by the learned trial court simply on the ground that under the garb of the application for additional evidence, petitioner/plaintiff is making an endeavour to fill up the lacuna in its case, which cannot be permitted under law. But while dismissing an application, learned trial court has failed to appreciate that documents required to be produced by the petitioner/plaintiff are essential for the proper and effective adjudication of the matter in controversy between the parties. In the absence of the certificate as well as C.D. which is otherwise the requirement of Section 65-B of the Act, the statement of account Ex.P-41 cannot be taken into consideration and it would be waste paper. Moreover, it is well settled proposition of law that additional evidence can be adduced at any time even at the appellate stage. In the instant case, suit is listed for rebuttal evidence as well as for arguments. Otherwise also, it cannot be said that an application for additional evidence has been moved just to fill up lacuna in the case or to delay the disposal of the suit.

3. In the light of what has been discussed above, this court is of the considered view that production of certificate as well as C.D. would certainly be helpful to the court for arriving at just conclusion of the matter. Dismissal of the application in the considered opinion of this court is not legally and factually justified. Accordingly, the impugned order dated April 17, 2017 (Annexure P-8) is set aside. Consequently, the trial court is

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directed to afford an opportunity to petitioner/plaintiff to produce the aforesaid documents as well as for the examination of witness who is to prove the documents.

4. Accordingly, instant petition is disposed of.

5. Since this order has been passed in the absence of the respondent, if he feels so aggrieved of this order, he shall have the liberty to approach this court.

June 01, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No