

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4671 of 2013

Date of decision:- January 12, 2017

AMARJIT SINGH

...PETITIONER..

VS.

RACHHPAL SINGH AND ANOTHER

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Kanwal Goyal, Advocate,
for the petitioner.

Mr. Kunal Dawar, Advocate,
for respondent No.1.

JASPAL SINGH, J.

Challenge in this civil revision petition is to the order dated 25.07.2013 (Annexure P-1) passed by ld. Additional Civil Judge (Senior Division), Fatehgarh Sahib whereby an application filed by the petitioner seeking permission to lead additional evidence by way of producing on record affidavit dated 04.05.2005 executed by plaintiff-petitioner and proving the same by examining Amrik Singh, Lambardar has been dismissed.

2. While assailing the impugned order dated 25.07.2013, it has been contended by learned counsel for the petitioner that the same is absolutely against the settled canons of law. The ld. trial court has failed to appreciate the fact that the entire case of the petitioner is based upon the fact that whether the petitioner was ready to perform his part of contract or not.

In order to prove the said fact, the petitioner has led his evidence, but inadvertently, due to the lapse on the part of the counsel appearing on behalf of the petitioner before the trial court, the said affidavit could not be produced on record earlier. Otherwise also, the petitioner is not going to be benefitted by withholding such a material piece of evidence, and it was only due to the above referred mistake of the counsel, the petitioner could not produce the said affidavit and examine the witnesses to prove it. Moreover, the other party can be compensated by way of cost. Such a request of the petitioner/plaintiff can be taken into consideration while exercising the inherent power under Section 151 CPC.

3. He further contends that the procedure is the hand-made justice, meant to advance the cause than to thwart the same. The procedural wrangles cannot be allowed to stay in the way of grant of substantial justice. In support of his submission, he has relied upon the following judgments:-

1. Phool Chand Jain v. Smit. Jotri Devi Jain, 2002 (1) RCR (Civil)233;

2. Pooja and others v. Jagdish Singh, 2014 (1) PLR 535;

3. Mohan Lal v. Bhim Sain and another, 2011 (2) PLR 377;

4. On the other hand, learned counsel for respondent No.1 has argued that neither the application moved before the trial court for permission to lead evidence is maintainable nor the relief sought by the petitioner-plaintiff can be granted in view of the fact that earlier the evidence of the petitioner-plaintiff was closed by the Court's order dated 24.07.2012, which has become final and conclusive as no revision against the said order was preferred. Even otherwise, in case, the petition is allowed to produce the same evidence by way of additional evidence, it would

tantamount to circumvent order of closure of oral evidence by order of the court.

5. To buttress his contention, learned counsel for respondent No.1 has relied upon following judgements captioned as:-

1. *Munna Lal v. Sadhu Ram and others*, 2009 (3) PLR 696;

2. *Surjan Singh v. Paras Ram*, 1994 (3) PLR 503 and

3. *Bhim Raj v. Jai Bhagwan*, 2000 (3) RCR (Civil) 16.

6. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the parties and has scanned the impugned order.

7. Concededly, the evidence of the plaintiff-petitioner was closed by the orders of the Court on 24.07.2012 subsequently on 23.08.2012 an application for permission to lead additional evidence to prove the affidavit dated 04.05.2005 by examining Amrik Singh, Lambardar was filed. It is also an admitted fact that the order dated 24.07.2012 whereby the evidence of the plaintiff-petitioner was closed by the orders of the court has assumed finality as no revision was preferred against that order to get it set aside.

8. In view of the observations made by this Court in the above referred judgements i.e. ***Munna Lal's case (supra)***, ***Surjan Singh's case (supra)*** and ***Bhim Raj's case (supra)*** relied upon by learned counsel for respondent No.1, application before the same court is not legally maintainable. Otherwise also, filing of such an application for additional evidence after the closure of the evidence of the plaintiff by the order of the Court would tantamount to circumvent order of closure of oral evidence by order of the Court. Otherwise also, the plaintiff-petitioner is unable to show

as to what precluded him from producing the evidence when the case was listed for the said purpose. Shifting of responsibility on the counsel is no ground for allowing an application for additional evidence.

9. Judgements relied upon by the learned counsel for the petitioner i.e. *Phool Chand Jain's case (supra)*, *Pooja's case (supra)*, *Mohan Lal's case (Supra) etc.* are not applicable in the facts and circumstances of the case in hand and are of no help to the petitioner.

10. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, it stands dismissed.

January 12, 2017

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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No