

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CR No. 514 of 2017 (O&M)
DECIDED ON: JANUARY 31, 2017

SAT PAL PURI

....PETITIONER

VERSUS

THE MUNICIPAL CORPORATION, LUDHIANA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Karanvir Singh Khehar, Advocate
 for the petitioner.

JASPAL SINGH, J

CM No. 1362-CII of 2017

Application is allowed, as prayed for.

CR No. 514 of 2017 (O&M)

Challenge in this revision petition is to the order dated September 23, 2016 passed by learned Civil Judge (Sr. Division), Ludhiana whereby, an application moved by the petitioner, under Section 151 of the Code of Civil Procedure (for short 'CPC') for rejecting the evidence of defendant tendered by way of an affidavit of DW-2 Sarvjit Singh, Advocate, has been dismissed.

The contention of learned counsel for the petitioner is that the dismissal of application moved by the petitioner for rejection of the testimony by way of an affidavit of DW-2 Sarvjit Singh, is absolutely wrong, illegal and

against the actual facts. In fact the affidavit furnished by DW-2 in his examination-in-chief is irrelevant, inadmissible and carries vague facts. He has no locus standi to appear as a witness on behalf of defendant. Similarly, the documents i.e photographs etc. place on record by the said witness alongwith his affidavit are also inadmissible in evidence being violative of Section 136 of the Evidence Act. Moreover, it is incumbent upon the Court concerned to decide the admissibility of the evidence before recording the statement of witnesses. Thus, impugned order is not sustainable in the eyes of law and deserves to be set aside. Consequently, the application moved by the petitioner under Section 151 of the Code deserves to be allowed.

This Court has given a deep thought to the various submissions made by learned counsel for the petitioner but does not find any legal and factual weight therein.

It is pretty settled that parties are master of their case(s) and they are at liberty to prove their respective claims by leading their evidence, which is available with them. They cannot be compelled or forced to examine a particular witness. It is a matter of scrutinization of the court concerned at the time of deciding the matter in controversy whether the testimony of a particular witness is relevant or not for the proper and effective adjudication of the matter. Moreover, it is not the requirement of law that a person who is not a party to the litigation cannot appear as a witness. The mere fact that DW-2 Sarvjit Singh is an Advocate by profession is itself no ground that he cannot appear and prove the photographs etc, particularly when he is aware of the litigation and is in a position to throw some light on the controversy. Otherwise also, the admissibility and relevancy of a statement of a particular witness is a matter of

fact and it would be premature to determine about it until or unless the witness is examined in the Court.

Thus, this Court does not find any illegality or infirmity in the impugned order. Rather, this court is of the considered view that the same is absolutely in consonance with the legal proposition of law.

Finding no merit in the instant revision petition, it stands dismissed.

JANUARY 31, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*