

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

C.R. No. 6589 of 2016

Date of Decision:- 21.02.2017

Harphool Singh and another

....Petitioners

vs.

Sh. Siri Ram and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Harkesh Manuja, Advocate,
for the petitioners.

None for respondents No. 1 to 3.

Mr. T.P. Singh, Advocate,
for respondent No. 4.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana,
for respondent No. 5.

Mr. Prateek Mahajan, Advocate,
for respondent No. 6.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 29.8.2016 (Annexure P-7) whereby the application filed by the petitioner-plaintiffs for leading additional evidence in the shape of report dated 9.1.2015 (Annexure P-4) prepared by the State Pollution Control Board, Panipat, has been dismissed.

Briefly the facts of the case are that petitioner-plaintiffs filed a suit for permanent as well as mandatory injunction before the trial Court by making averments that respondent-defendants No. 1 to 4 had installed an industrial factory/workshop in the adjoining building and on account of its constant working, the lives of the inhabitants including school going as well as college going students have become hell. Not only the noise but vibrations are also there in the building because of the industrial concern being run by respondent-defendants No. 1 to 4.

During pendency of the suit, the petitioner-plaintiffs moved an application for leading additional evidence by producing information provided by the Public Information Officer of Haryana Pollution Control Board, Panipat along with inspection report dated 9.1.2015 provided under the Right to Information Act. Separate reply of the application was filed by respondents No. 1 and 7. Said application was dismissed vide order dated 29.8.2016 which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioners submits that the trial Court has not taken into consideration the averments made in the application that in spite of making all efforts, the copy of the inspection report was not provided to them. Even the petitioners were never associated and, therefore, they were not having any knowledge about the report. As soon as the report came to the notice of the petitioners, copy thereof was applied and information was obtained under RTI. Learned counsel also submits that report has been prepared by the State Pollution Control Board in discharge of its official duties which is necessary to be placed on record

for just decision of the controversy in hand. Learned counsel also submits that the inspection report is a valuable piece of evidence which would help the trial Court in arriving at just and correct decision of the suit. At the end, learned counsel for the petitioners submits that the trial Court has failed to appreciate that the respondent-defendants will have their chance to rebut the evidence sought to be adduced by the petitioners but still impugned order has been passed.

Learned counsel for respondents No. 4 to 6 have opposed the submissions made by learned counsel for the petitioners and submit that the alleged report which has been sought to be adduced by way of additional evidence is of dated 9.1.2015 and many opportunities were given to plaintiff-petitioners for conclusion of their evidence and their evidence was closed on 12.05.2015. Learned counsel also submit that the petitioners have examined Junior Engineer of Pollution Department as PW-9 and as such, the application has rightly been dismissed.

Heard arguments of learned counsel for the parties and have also perused the impugned order and other documents available on record.

Filing of suit by plaintiff-petitioners, filing reply thereof as well as moving application by petitioners for leading additional evidence in the shape of report dated 9.1.2015 are not disputed.

As per averments made in the application, the plaintiffs have sought information under the Right to Information Act and has also obtained inspection report prepared by the Officers of the Pollution Control Board. The report reflects that the noise level at the time of

checking which was much more than prescribed in the schedule. The inspection report endorses the contentions raised by the plaintiffs which can be a valuable piece of evidence. Said report dated 9.1.2015 came to their notice subsequently and the application was moved which has been dismissed.

On perusal of impugned order, it transpires that it has simply been mentioned that 10 opportunities were given to plaintiffs for conclusion of their evidence and after availing the opportunities, the evidence was closed on 12.5.2015. Nothing has been mentioned as to whether the report prepared by the Pollution Control Board is necessary for just decision of the issue in suit or not. It is the specific averment in the application that earlier the petitioners were not having any knowledge about the said report. On coming to know, the information was sought under the RTI but while the report was prepared, the petitioners were not associated. Moreover, that report has been prepared by the State Pollution Control Board in discharge of their official duties and same can be helpful to the trial Court for reaching to just conclusion in the suit. The respondent-defendants will also have their chance to rebut the evidence in case the application is allowed and the petitioners are also ready to compensate them in monetary terms and no prejudice is going to be caused to them.

It is a well settled preposition of law that in case, the evidence was not within the knowledge or could not be produced by the party even after exercise of due diligence, then the application should be allowed. In the present case, the petitioners have stated that they were not having knowledge about the report but it came to their notice subsequently and

they sought information under the RTI Act. There is a specific provision under Order 18 Rule 17-A for production of evidence if not previously known or the evidence which could not be produced despite due diligence. This provision enables the Court to permit the parties to produce any evidence even at a later stage if the Court is satisfied that even after exercise of due diligence, the evidence was not within the knowledge and could not be produced by the party while leading the evidence. This provision was omitted by the Civil Procedure Code (Amendment) Act, 1999 w.e.f. 1.7.2002 as it was felt that unnecessary applications were being filed primarily to delay the conclusion of the trial but it does not take away the inherent power of the Court to do substantial justice between the parties and to allow any material evidence to be led unless it is done with *mala fide* or is due to gross negligence. The Court is to examine *prima facie* the relevancy of the material sought to be produced to conclude that the application filed is bona fide and not to abuse the process of law or to harass the other party. The Court is to ensure that the procedural law is not being misused just to delay the decision of the suit but at the same time the substantial justice is done to the parties.

Hon'ble the Supreme Court in ***K.K. Velusamy vs. N. Palanisamy, 2011 (2) RCR (Civil) 875*** has summarised the scope of additional evidence as under :-

“(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is

`right' and undo what is `wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the

court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a *carte blanche* to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the *bona fides* of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.”

Hon'ble the Apex Court has further held in para 16 of the above judgment, which is reproduced as under :-

“16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be *bona fide* and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to

compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

In view of the facts and law position as discussed above, the application moved by the petitioner-plaintiffs cannot be said to be filed with *mala fide* intention but while dismissing the application, no reason whatsoever has been mentioned by the trial Court and no finding has been recorded as to how the inspection report is not relevant for decision of the controversy in hand. Simply by saying that there is a delay and many opportunities have been availed, the application filed by the petitioners has been dismissed.

Accordingly, the revision petition is allowed; impugned order

dated 29.8.2016 (Annexure P-7) is hereby set aside and the trial Court is

directed to give one effective opportunity to the petitioner-plaintiffs to lead additional evidence subject to payment of ₹ 10,000/- as costs to be paid to party opposite.

February 21, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes