

C.R. No. 63 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 63 of 2017

DATE OF DECISION:11.01.2017

Narain Dass

.....Petitioner

Versus

Surt Singh

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Abhishek Sethi, Advocate
for the petitioner.

Mr. V.B. Aggarwal, Advocate
for the caveator-respondent.

DAYA CHAUDHARY, J.

Respondent-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 22.3.2013 against the petitioner-defendant. During trial, statement of PW-1 Surt Singh was recorded. Thereafter an application was moved by the petitioner for recalling PW-1 Surt Singh, which was dismissed vide order dated 17.12.2016, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that application was wrongly dismissed, whereas, certain documents which came to the notice of the petitioner subsequently, wherein, PW-1 Surt Singh has given different addresses, denial of those documents is necessary for just decision of the case. Learned counsel further contends that recalling of PW-1 Surt Singh is necessary to prove that he had not approached the civil Court with clean hands and had tried to play fraud not only with the petitioner but has

misled the civil Court as well. At the end, learned counsel for the petitioner submits that no prejudice is going to be caused to the other side and he is ready to compensate the respondent in monetary terms.

Mr. V.B. Aggarwal, learned counsel for caveator-respondent has opposed the submission made by learned counsel for the petitioner and submits that recalling of respondent is not necessary as he was not only examined but cross-examined at length. He further contends that by filing the application before the civil Court, the petitioner wanted to fill up the lacunae in the case. A detailed and well reasoned order has been passed, which requires no interference and as such the present petition may be dismissed.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order and other documents available on the file.

The facts regarding pendency of the civil suit and moving an application by the petitioner for recalling of PW-1 Surat Singh are not disputed. It is also not disputed that the said witness was already examined and cross-examined as well. The petitioner wants to recall the said witness as certain documents regarding place of residence and giving addresses of different places came to his notice after recording of the statement of said witness. It has been mentioned in the application that said witness has mentioned his residential address of District Muzaffarnagar (UP), whereas, it was not found correct as the Gram Panchayat of Village Kertu issued a certificate that no such person is resident of that village. It has also been mentioned in the application that PW-1 Surt Singh while appearing in the witness box has stated that his child is a student of Class 8th in Govt. School

of Village Kertu, whereas, the Head Master of the said School has issued a certificate that no child of any Surt Singh was student of that school. As per argument raised by learned counsel for the petitioner, recalling of PW-1 Surt Singh is necessary as the documents, which came to his notice later on were to be put in cross-examination as not only wrong facts have been mentioned but his conduct is also reflected by giving false addresses. The application moved by the petitioner was dismissed only on the ground that he wanted to fill up the lacunae in the evidence. Moreover, learned counsel for the petitioner submits that only one single opportunity is required to cross-examine the said witness and the counsel representing the petitioner before the civil Court will restrict his cross-examination to the extent of documents mentioned in the application.

Accordingly, by considering the submissions made by learned counsel for the petitioner that only one single opportunity is required and no prejudice is going to be caused to the other party as the petitioner is ready to compensate the other side in monetary terms, the present petition is allowed and impugned order dated 6.12.2016 is set aside. The civil Court is directed to give one effective opportunity to the petitioner to cross-examine PW-1 Surt Singh subject to payment of cost of ₹ 10,000/- to the respondent. However, it is clarified that effective opportunity means that the said witness should be present before the civil Court on the date when he is to be cross-examined.

January 11, 2017

pooja

(DAYA CHAUDHARY)**JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
No