

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.7167 of 2017 (O&M)  
Date of Decision : 30.10.2017.

Sudan Singh

... Petitioner

VERSUS

Rattan Singh

.... Respondent

**CORAM : HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. Ram Kumar Saini, Advocate for the petitioner.

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**B.S.WALIA, J.,**

1. Prayer in the revision petition under Article 227 of the Constitution of India is for setting aside order dated 02.08.2017 (Annexure P-5), passed by the learned Civil Judge (Junior Division), Hisar, whereby the application filed by the petitioner-plaintiff (hereinafter referred to as the petitioner ) for leading additional evidence was dismissed.

2. Brief facts of the case alleged by the petitioner leading to the filing of the revision petition are that the petitioner filed Civil Suit No.CS-749/2015 for permanent injunction that he was owner in possession of plot No.418, measuring 233 sq. yards situated in Sundar Nagar, Hisar and that the same had been reallocated to him vide membership No.1387, through resolution No.3, dated 29.01.2006, passed by 'The Hisar Animal Husbandry Coop. House Building Society Ltd.'. Physical possession of the plot in question was given to the petitioner on 15.06.2006, where after petitioner claims to have started a buffalo diary on the same but due to

unavoidable circumstances, had to close it in October, 2006, however, the husk roof installed by him on the plot in question was still standing on the said plot. Respondent-defendant (hereinafter referred to as the respondent), who was residing in adjacent plot No.422, Sundar Nagar, District Hisar, was having an evil eye on said plot and was unnecessarily interfering in the peaceful possession of the petitioner over the plot in question. On 02.05.2015, petitioner saw that the respondent was fixing 'khuntas' for tethering cattle at the plot of the petitioner without his consent and permission. Despite requests by the petitioner, the respondent did not desist, rather threatened to dispossess the petitioner from the plot in question, whereupon the petitioner filed civil suit.

3. On putting in appearance, the respondent filed written statement denying the averments in the plaint and alleging that he was in possession of the plot in question for the past 15 years. Issues were framed by the learned trial Court and parties were directed to lead evidence. In order to prove his claim, the petitioner examined himself as PW-1 and Jai Ram Dass Chawla (JD Chawla) as PW-3 (wrongly mentioned as PW-2 in the impugned order). Respondent opted not to lead evidence, accordingly his evidence was struck off vide order dated 28.03.2016.

4. Petitioner claims that Jai Ram Dass Chawla (JD Chawla) was sought to be examined by him under the impression that he was working as Secretary of the Hisar Animal Husbandry Coop. House Building Society Ltd. Accordingly, said Jai Ram Dass Chawla (JD Chawla) was examined and cross-examined on 08.08.2016. However, petitioner later on learnt that Jai Ram Dass Chawla (JD Chawla) was not competent to give evidence on

behalf of the Society as the Deputy Registrar, Cooperative Societies, Hisar, had issued order/letter endorsement No.1961-64/GA-1/DRH dated 27.07.2016, prohibiting Jai Ram Dass Chawla (JD Chawla) from discharging duties as Secretary of the Society till production of order setting aside his conviction by the Civil Judge (Senior Division), Hisar, in execution petition No.63 of 2011, in 11693/11, for offence under Section 32 CPC for non-compliance of decree. In the aforementioned background, the petitioner moved an application for leading additional evidence on the ground that Jai Ram Dass Chawla (JD Chawla) was not competent to depose on oath in the case.

5. The respondent filed reply to the application controverting the plea raised therein and stated that the order of conviction had been recalled on 19.02.2016, whereas the order of the Deputy Registrar, Cooperative Societies, Hisar, upon which reliance was placed by the petitioner was of a much later date i.e. 27.06.2016.

6. The learned Trial Court dismissed the application on the ground that the conviction of Jai Ram Dass Chawla (JD Chawla) vide dated 25.01.2016 had been set aside on 19.02.2016 i.e. much prior to the passing of order dated 27.06.2016, therefore, Jai Ram Dass Chawla (JD Chawla) was competent to give evidence on oath before the Court.

7. On query, learned counsel admitted that order of conviction of Jai Ram Dass Chawla (JD Chawla) under Section 32 CPC for non-compliance of decree passed on 25.01.2016 had been recalled vide order dated 19.02.2016 as compliance of decree was made by Jai Ram Dass Chawla (JD Chawla). Learned counsel contended that although at the time his

evidence was recorded, Jairam Dass Chawla (JD Chawla) was competent to give evidence but the circumstances revealed that PW-3 was not a trustworthy witness therefore he wanted to lead additional evidence by summoning the Inspector of the Society from the O/o Assistant Registrar, Cooperative Societies, Hisar to prove that allotment of plot No.418 had been made in his name and that in case the application was allowed, it would not prejudice the case of the respondent and he would get opportunity to cross-examine the witness sought to be summoned by way of additional evidence.

8. I have considered the submissions of learned counsel. A perusal of the impugned order reveals that the learned trial Court took into account that Jairam Dass Chawla had appeared in the Civil Suit as PW-3 (alleged by petitioner as wrongly recorded as PW-2 in the impugned order) and produced the record before the Court as summoned by the petitioner and gave evidence in the case, that the alleged order of the Deputy Registrar, Cooperative Societies, bearing letter No.1961-64/GA-1/DRH dated 27.07.2016 was a conditional order, whereas the order passed by the Court of Shri Sudeep Goel, the then learned Civil Judge (Senior Division), Hisar in execution petition No.63 of 08.091.2011, on 25.01.2016 in case titled as 'Prem Kumar vs. Animal Husbandry Cooperative House Building Society etc.' was withdrawn by the Court on 19.02.2016, whereas the alleged order of the Deputy Registrar Cooperative Societies, Hisar was passed on 27.07.2016. The learned trial Court also took into account that the main motive of the petitioner was to produce record of the society to prove his case and the same had already been produced from the custody of the

society, therefore, at that stage, he could not claim that the record ought to have been produced by anybody other than Jairam Dass Chawla, Secretary of the Society. The learned trial Court also took into account that PW-3 i.e. Jairam Dass Chawla had been directed not to discharge duties as Secretary in the Society, vide order dated 27.06.2016, but the said order passed by the Deputy Registrar, Hisar, was a conditional order in as much as the same directed Jairam Dass Chawla not to discharge duties till he produced orders of setting aside of his conviction. Compliance of decree had been made by Jairam Dass Chalwa and pursuant thereto, order dated 25.01.2016 was recalled vide order dated 19.02.2016 by Shri Sudeep Goel, the then Civil Judge (Senior Division), Hisar whereas Jairam Dass Chawla had appeared before the Court on 08.08.2016 as PW-3 after recall of order dated 25.01.2016. In the circumstances the trial Court held that Jairam Dass Chawla was competent to give evidence, accordingly dismissed the application.

9. Petitioner has placed on record copy of order dated 19.02.2016 (wrongly recorded as 19.09.2016 in the impugned order) as also order dated 23.02.2017, passed by the Deputy Registrar, Cooperative Societies, Hisar. Order dated 19.02.2016 is reproduced as under:-

*“ Present : Shri P.S.Bajia, counsel for the applicant-JD.  
 Shri S.K.Gupta, Advocate for the DH-respondent.  
 Original file received from the record room. In view of  
 the statement made by learned counsel for the DH, execution  
 petition is hereby dismissed as withdrawn being fully satisfied.  
 Order dated 25.01.2016, is hereby recalled. Papers be tagged  
 with the main file and the same be consigned to the record room  
 after due compliance. Pronounced in open Court.  
 Sd/-  
 Sudeep Goel,  
 CJ(SD), Hisar.”*

19.02.2016.

10. A perusal of order dated 19.02.2016, reveals that order dated 25.01.2016, had been recalled. The aforementioned order goes to prove beyond an iota of doubt that on the date when Jairam Dass Chawla appeared as PW-3 and gave evidence as Secretary of the Society, the order of conviction dated 25.01.2016 was no longer in operation having been recalled by Shri Sudeep Goel, the then learned Civil Judge (Senior Division), Hisar. Reliance placed by learned counsel for the petitioner on order dated 19.02.2017 (Annexure P-7) is merely a hyper technical approach as order dated 27.06.2016 recorded that Jairam Dass Chawla was not competent to perform duty as Secretary in the Society till he did not produce an order setting aside his conviction. It is not believable that a person who has been restrained from discharging duties by the authorities on account of his conviction would keep the orders of setting aside of his conviction with him and not bring it to the notice of the authorities. No doubt orders passed by the Deputy Registrar, Cooperative Society, Hisar dated 27.06.2016 were withdrawn later on. However, be as it may, import of order dated 27.06.2016 was to ensure that Jairam Dass Chawla was not to discharge duty till such time that his conviction was not set aside. The order convicting Jai Ram Dass Chawla having come to an end on recall of said orders on 19.02.2016, there is no merit in the plea that JD Chawla was not competent to give evidence. Finding no merit in the revision petition, the same is dismissed in limine.

30.10. 2017  
rajneesh

(B.S.WALIA)  
JUDGE

Whether speaking/reasoned : Yes / No  
Whether reportable : Yes / No