

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 13.01.2017

1. CR No.7737 of 2016 (O&M)

K. Christopher (Retd.)

... Petitioner

Vs.

Rashvinder Kaur Vohra and others

... Respondents

2. CR No.7757 of 2016 (O&M)

K. Christopher (Retd.)

... Petitioner

Vs.

Rashvinder Kaur Vohra and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. N.K. Vadehra, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical revision petitions, at the hands of defendant No.1, are directed against the order dated 18.04.2016, whereby application moved by the petitioner permitting his expert witness i.e. building expert to inspect the suit property was declined. In Civil Revision No.7757 of 2016, petitioner has also challenged later order dated 12.10.2016 passed by the learned trial Court, whereby his application seeking review of the abovesaid

order dated 18.04.2016 was dismissed.

Heard learned counsel for the petitioner in both the cases.

During the course of hearing, when confronted with the material aspect of the matter as to how any party can seek assistance of the Court to collect evidence in his/her favour, learned counsel for the petitioner submits that Court has wide discretionary powers in this regard. To support his contentions, he places reliance on a judgment of this Court in **Surat Singh and another Vs. Mohan Lal and others, 2014 (1) PLR 376.**

Having heard learned counsel for the petitioner, after going through the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the submissions made by learned counsel for the petitioner have been found wholly misplaced and both these revision petitions are misconceived, which are liable to be dismissed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that plaintiff has filed the suit for declaration and permanent injunction. It goes without saying that onus was on the plaintiff to prove his case by leading cogent findings. A bare reading of the impugned orders passed by learned trial Court would make it crystal clear that the petitioner was seeking the assistance of the learned trial Court, for collecting evidence, to produce the same before the Court, against the plaintiff.

Firstly, as noticed hereiabove, no party can be permitted to seek assistance of the Court with a view to collect favourable evidence. To collect and produce its evidence, is the responsibility of the litigating party. Court will not assist any party to the litigation to collect the evidence. Having said that, this Court feels no hesitation to conclude that learned trial Court committed no

error of law, while passing the impugned orders and the same deserve to be upheld.

No doubt, the Court has wide discretionary powers under Section 151 of the Code of Civil Procedure. However, it is equally true that such discretionary powers are to be exercised very cautiously and not mechanically in every given situation. Discretionary powers are to be exercised for advancing the cause of justice and not for helping one particular litigating party to collect evidence, so as to defeat the other litigating party. Exercise of discretionary powers for this purpose are not at all permissible in law. It is the sole responsibility of the petitioner to collect the best evidence available to him and produce the same before the Court. If the petitioner was unable to collect the best evidence in his favour, he was not entitled to invoke the discretionary jurisdiction of the learned trial Court for the said purpose. Since the learned trial Court was well within its jurisdiction to pass the impugned orders, the same deserve to be upheld, for this reason also.

So far as the judgment relied upon by learned counsel for the petitioner is concerned, there is no dispute about the observations made therein. However, a close perusal of the cited judgment would show that it is of no help to the petitioner, being distinguishable on facts. There could not be any dispute that every party would be at liberty to lead its evidence according to its choice, putting up its best case before the Court. Peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in *Padmausund Rao and another Vs. State of*

Tamil Nadu and others, 2002 (3) SCC 533.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these revision petitions having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both these revision petitions stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

13.01.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No