

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

-.-

Civil Revision No. 8126 of 2017

Date of decision: 20.11.2017

Sahdev and others

..... *Petitioners*

Versus

Raghubir alias Ranbir alias Rugha and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Amit Jain, Advocate
for the petitioners

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 24.10.2017 (Annexure P7) passed by the Civil Judge (Junior Division) Hisar whereby application dated 28.08.2017 (Annexure P5) for allowing the petitioners to examine six witnesses has been dismissed.

Counsel for the petitioners has submitted that the petitioners/ plaintiffs filed a suit for declaration to the effect that the plaintiffs along with pro forma defendant No. 50 are co-sharers/owners in possession of land, detailed in headnote of the plaint with further prayer to declare revenue entries in favour of defendants No. 1 to 49 to be illegal, null and void and liable to be corrected in favour of the plaintiffs and pro forma defendants.

The plaintiffs concluded their oral evidence and when the case was pending for tendering document (s) by the petitioners/plaintiffs, defendant No. 32 who was earlier proceeded against ex parte filed an

application for setting aside *ex parte* proceedings and the same was allowed by the trial Court on 21.07.2017 (Annexure P3) and the case was adjourned to 01.08.2017 for filing written statement by defendant No. 32. Counsel for defendant No.32 before the trial Court also suffered a statement that he may be granted one opportunity to file written statement and thereafter cross examine the witness (es) already examined by the plaintiffs. Later, the plaintiffs filed the instant application for summoning the witnesses vide application (Annexure P4) and the Court allowed the petitioners to deposit Rs.9,30.00 towards diet money etc. but later the petitioners were not permitted to examine the witnesses.

Counsel for the petitioners has submitted that since *ex parte* proceedings against defendant No. 32 have been set aside by the Court and he has been allowed to cross examine the witness (es) already examined by the petitioners/plaintiffs, the petitioners are entitled to lead further evidence even though their oral evidence was closed by way of statement made by their counsel. In support of his contention, he has referred to judgment of the Himachal Pradesh High Court ***Shyam Lal Sharma v Social Finance and Commercial Company Limited and others 2010 (49) R.C.R. (Civil) 742.***

I have heard counsel for the petitioners and perused the paper book particularly various annexures appended with the petition.

Be that as it may, the petitioners have already concluded their oral evidence before *ex parte* proceedings against defendant No. 32 have been set aside. Indisputably, defendant no. 32 filed the written statement and no fresh issue has been framed by the Court on the basis of averments

made in the written statement of defendant No. 32. Defendant No. 32 is yet to cross examine the witness (es) of the petitioners already examined before closing their case. It is surprising that the petitioners without waiting for cross examination of the witness (es) by defendant No. 32, filed the instant application for summoning as many as six witnesses and got an order with regard to deposit of their diet money. The petitioners cannot be allowed to examine further witnesses even without the witness (es) already examined are cross examined by defendant No. 32. The petitioners, in place of filing an appropriate application for adducing additional evidence, have adopted a clever devise to examine additional witness (es) in the guise that ex parte proceedings against defendant No. 32 have been set aside. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition is disposed of but without prejudice to right of the petitioners to file an appropriate application for examination of further witnesses after cross examination of the witness (es) by defendant No. 32 or an application for adducing additional evidence. An application filed by the petitioners in this regard shall be disposed of by the trial Court, in accordance with law.

(Rekha Mittal)
Judge

20.11.2017
mohan bimbra

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