

Civil Revision No.1175 of 2018

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

Civil Revision No.1175 of 2018
Date of decision: 20.02.2018

Satnam Singh

.....Petitioner

versus

Pawan Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Arvinder Arora, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision petition under Article 227 of the Constitution of India challenge has been laid to order dated 12.02.2018 (Annexure P-4) of the trial Court dismissing the application of the petitioner-plaintiff for summoning and examination of concerned clerk of UCO Bank, Kharar Branch, along with statement of account No.21900110000588 in the name of petitioner in rebuttal evidence or in the alternative as additional evidence.

In nutshell, in a suit for possession by way of specific performance of agreement to sell dated 20.10.2010 against respondents No.1 to 10, petitioner at the time of his rebuttal evidence moved an application for summoning of the aforesaid witness to show that he had sufficient funds in his bank account to prove that he was always ready and willing to perform his part of the contract, which the trial Court dismissed

vide impugned order.

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Learned counsel for the petitioner contends that the trial Court has wrongly and illegally dismissed the application aforesaid of the petitioner without appreciating the fact that entire controversy in the suit between the parties revolves around the fact that as to whether the petitioner was ready and willing to perform his part of contract or who out of the parties was at fault. The evidence sought to be led by the petitioner would help the trial Court in effective adjudication of the real bone of contention between the parties and, therefore, the petitioner may be granted an opportunity to examine the aforesaid witness and his account statement.

Having given considerable thought to the submissions made by learned counsel for the petitioner, this Court is of the view that no prejudice is going to be caused, if the petitioner is allowed to lead evidence in support of his contention that he was always ready and willing to perform his part of the contract which is the core issue for adjudication before the trial Court.

By examination of the aforesaid witness of bank and account statement of the petitioner, nature of the suit is also not going to be changed.

However, since the application has been filed by the petitioner at belated stage for examination of aforesaid official of the bank, which he ought to have examined at the time of his affirmative evidence, therefore, contesting respondents are liable to be compensated with costs.

In view of discussion made above, impugned order dated 12.02.2018 (Annexure P-4) dismissing the application of the petitioner for examination of the concerned clerk of the UCO Bank, Kharar Branch, along with account statement of the petitioner, is set aside.

Consequently, petitioner is permitted to examine the said witness and the account statement subject to costs of Rs.50,000/-, out of which 50% shall be paid to the opposite side and the remaining shall be

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deposited with the Legal Services Authority, Punjab.

This petition is disposed of without issuing notice to the respondents with a view to impart justice to the parties and to save the huge expenses which may be incurred by the respondents and also to avoid unnecessary delay in the adjudication of the matter. Still, if dissatisfied, the respondents may move this Court for recalling this order within six weeks from today.

(Ramendra Jain)
Judge

February 20, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.