

**CM No. 27495-CII-2018 in/and
CR No. 2440 of 2015**

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

**CM No. 27495-CII-2018 in/and
CR No. 2440 of 2015
Date of Decision: 18.12.2018**

Vikas Jain

.....Petitioner

Vs.

The Rohtak Wholesale Cloth Merchant Association and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. C.B. Goel, Advocate,
for the applicant-petitioner.

Mr. Deepak Girotra, Advocate,
for respondents no. 3 and 7.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 27495-CII-2018

Pursuant to the order of this Court dated 03.12.2018, this application has been filed seeking to place on record as Annexure P-2, an application dated 27.11.2014 filed before the trial Court.

Notice in the application.

Mr. Deepak Girotra, Advocate, who is present in Court accepts notice on behalf of the non-applicants/respondents no. 3 and 7, and submits that he has no objection if the aforesaid application is allowed.

Consequently, the application is allowed and the copy of the application dated 27.11.2014 is ordered to be taken on record as Annexure P-2.

CR No. 2440 of 2015

By this petition, the petitioner has challenged the order of the learned trial Court [Additional Civil Judge (Senior Division)], Rohtak, 03.03.2015, by which the application of the petitioner (filed invoking jurisdiction under Section 151 of the CPC), seeking to lead additional evidence in the form of documents, has been dismissed.

The documents sought to be led by way of additional evidence by the petitioner (plaintiff in the suit), are assessment notices of house tax, and receipts issued with regard to payment of house tax.

The suit of the petitioner-plaintiff was actually instituted in the year 1989, with it eventually having been dismissed-in-default in the year 2004.

An application for restoration having been filed within a few days of such dismissal, that application was eventually allowed on 01.11.2014, with costs of Rs. 3,000/- imposed upon the petitioner-plaintiff.

Though that aspect need not be gone into by the Court, the said restoration not being the subject matter of challenge in this petition, it is suffice to say that while allowing that application the trial Court had referred to the fact that some revision petitions remained pending before this Court in the interim period.

After the restoration of the suit, the petitioner first sought to lead additional evidence, vide an application filed on 19.11.2014, which was allowed by the trial Court on 25.11.2014, the documents allowed to be led by way of evidence being revenue record and some documents earlier exhibited in some other *lis*.

Immediately thereafter, on 27.11.2014, another application came to be filed by the petitioner seeking to lead further additional evidence in the form of the

aforementioned assessment orders and receipts of house tax paid, with that application having been dismissed vide the impugned order, on the ground that such applications were being filed time and again by the petitioner in a suit of the year 1989, with the previous application also having been allowed just a few days prior thereto, and therefore there being therefore no ground to allow him to keep leading additional evidence from time to time.

Notice of motion having been eventually issued in this petition on 08.02.2016, however prior thereto the trial Court had already been directed to not to dispose of the matter finally.

Mr. Goel, learned counsel for the petitioner, points to the fact that in the application dated 27.11.2014, as has been dismissed, it had been specifically stated by the petitioner that in fact counsel had failed to attach the documents sought to be led in evidence, with the earlier application filed 08 days prior thereto, and consequently the petitioner should not be made to suffer.

He further submits that the documents now sought to be led by way of evidence are all assessment orders/receipts issued in the year 2013 and naturally they could not have been gathered by the petitioner prior to that time in any case.

Upon the relevance of the documents, Mr. Goel submits that the said documents are sought to be led by way of evidence to show that assessment of house tax of the urban property, was made by the Municipal Corporation after buildings had been erected by the respondents on what is contended to be land belonging to the petitioner, and hence they are essential to prove as to when those buildings actually came up.

Learned counsel appearing for respondents no. 3 and 7 reiterates the reasoning given in the impugned order, to submit that the suit having remained

pending for 25 years even at the time when the application was filed seeking to lead additional evidence, the trial Court has not erred in any manner in dismissing it, especially as the petitioner had already filed another such application immediately prior thereto, with which he could have annexed the documents now sought to be led by way of evidence.

He further submits that the application having been filed not by the plaintiff himself but by his attorney (appointed by way of an instrument granting General Power of Attorney), the application itself was not maintainable.

[In reply to the aforesaid contention, Mr. Goel submits that at the time when the suit was filed the petitioner-plaintiff was a minor and consequently it had been filed through his father; and after the petitioner attained majority, he had executed a power of attorney in favour of his father and therefore, the application has been filed by the attorney].

Learned counsel for respondents no. 3 and 7 still further submits that in the application filed on 27.11.2014, no mention had been made of the application filed on 19.11.2014 and as therefore, the application having concealed a material fact, it should have been dismissed on that ground alone.

Having considered the matter, though there would be otherwise no reason to disagree with the reasoning given by the learned trial Court, as also with what has been contended by learned counsel for respondents no. 3 and 7 before this Court, what this Court is bound to consider is also the fact that the application that has been dismissed was filed within 02 days of the previous application having been allowed and within 08 days of the previous application having been filed. Hence, whether it was due to counsels' fault or otherwise, the application not being unnecessarily delayed, and the suit actually having been restored in the same

month, i.e. on 01.11.2014, and further, the documents now sought to be led by way of evidence being documents that came into existence only in the months of July and August, 2013, equity, in my opinion, can be balanced by firstly awarding costs to the respondents, to be paid by the petitioner, subject to which only the application would be allowed and secondly, by giving a clear direction that no further application for leading any more additional evidence shall be permitted by the trial Court.

In terms of the above, this petition is allowed and the impugned order set aside, with a direction issued that upon the petitioner paying costs of Rs. 10,000/- to the respondents, the application seeking to lead additional evidence, as has been referred to hereinabove, (i.e. the application dated 27.11.2014), be allowed and the additional evidence sought to be led be taken on record by the trial Court, which of course would have to be proved by the petitioner by granting him one effective opportunity to do so, such effective opportunity also to be taken within a reasonable time.

It is further made clear that nothing observed hereinabove by this Court would be taken to be an observation by this Court on the merits of the case of the parties, which naturally would be gone into wholly on the basis of the evidence led by them before the trial Court.

Naturally, it being an old case, the trial court would endeavour to conclude it as early as possibly.

December 18, 2018
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes