

**C.M.No.25377-CII-2018 in/and
CR No.268 of 2017 (O&M)**

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

**C.M.No.25377-CII-2018 in/and
CR No.268 of 2017 (O&M)
Date of decision:28.11.2018**

Amarjit Singh

... Petitioner

Vs.

Nirmal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.R.D.Bawa, Advocate
for the petitioner.

Mr. Bhavesh Aggarwal, Advocate
for respondent No.1.

Mr. Vivek Salathia, Advocate
for respondent No.3.

AMIT RAWAL J.

C.M.No.25377-CII of 2018

For the reasons stated in the application which is duly supported by an affidavit, order dated is 14.11.2018 is recalled and the revision petition is restored to its original number.

C.M. stands allowed.

CR No.268 of 2017 (O&M)

The present revision petition is directed against the impugned order dated 29.11.2016 (Annexure P-5), whereby, an application under Section 151 of Code of Civil Procedure, for allowing the plaintiff to tender

the certified copy of the documents by way of additional evidence in a suit claiming damages amounting to ₹10 lakhs on account of wrongful acts of defamation caused by the defendants alongwith interest at the rate of 12% per annum, has been dismissed.

Mr. R.D.Bawa, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the plaintiff had filed a suit claiming the aforementioned relief by taking various grounds which was contested by the defendants by raising numerous preliminary objections. However, the suit was slated for rebuttal evidence on 06.10.2016. The certified copies of affidavits of Charan Kaur, Sukhwinder Kaur, Gurmit Singh and Iqbal Singh and the certified copy of OPD ticket of Dr. Vidya Sagar Institute of Medical Health, Amritsar, certified copy of application filed by the plaintiff to the Education Minister and others and copies of the relieving certificate as indicated in para 5 of the application are very much material for determination of the real controversy as it would help the Court in adjudicating the lis but the Court below dismissed the application vide impugned order dated 29.11.2016 by holding that it was an attempt to delay the adjudication of the suit as all these documents were in the knowledge of the plaintiff but intentionally did not bring the same at the time when the plaintiff was leading the evidence in affirmative.

Per contra, Mr. Bhavesh Aggarwal and Mr. Vivek Salathia, learned counsels representing respondents No.1 and 3, respectively submitted that the aforementioned evidence tantamounts to cover up the

lacunae in the absence of any rebuttal issue, therefore, cannot be brought on record by way of additional evidence. In other words, it was stated that all the documents are evidence of affirmative and are not of subsequent events and has only a right to lead rebuttal evidence, thus, documents cannot be brought on record under the provisions of Section 151 of Code of Civil Procedure and urged this Court for dismissal of the petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that no doubt, the plaintiff was not diligent in leading the evidence in affirmative but as the explanation given in the revision petition is that the aforementioned documents came to knowledge of the plaintiff only during the pendency of the suit. In such circumstances, the Court below should not have adopted the strict view in declining the application.

Keeping in view the fact that suit for damages of ₹10 lakhs has been filed in the year 2010 and pending adjudication which would have curtailed the protraction of the litigation, particularly, the revision petition is pending adjudication since 2017. The additional evidence is also part of the record of revision petition.

Since the plaintiff had been negligent and lackadaisical in not bringing on record the additional evidence, I deem it appropriate to allow the revision petition by imposing the costs of ₹78,000/- to be paid by the plaintiff to the defendants (₹.6000/-each) (i.e. 13 in number) which is a condition precedent.

It is also made clear that petitioner would not delay the adjudication of the lis under the garb of the present order. In case, such attempt is reflected, the trial Court would be at liberty to take appropriate steps in accordance with law.

Revision petition stands allowed.

November 28, 2018

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Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No