

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

**CR No.3561 of 2015 (O & M)
Date of Decision:-08.2.2018**

Sarabjit Singh and others

...Petitioners

Versus

Atul Kumar

...Respondent

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Karan Gupta, Advocate
for the petitioners.

Mr. Bhoop Singh, Advocate
for the respondent.

AMIT RAWAL J.(Oral)

Petitioner-defendant is aggrieved of the impugned order dated 11.5.2015 (Annexure P-1) whereby the application under Order 18 Rule 17 read with Section 151 CPC moved by the respondent-plaintiff for recalling of DW1 Sarabjit Singh for further cross-examination has been allowed.

Mr. Karan Gupta, Advocate learned counsel appearing on behalf of petitioner has submitted that a civil suit seeking specific performance of agreement to sell dated 20.12.2006 at the instance of respondent-plaintiff is pending adjudication. During the pendency of the suit an application for additional evidence for placing on record original copy of jamabandi for the year 2004-05, photocopy of the which was

already placed on record, which was allowed vide order dated 11.5.2015 (Annexure P-8). It was not any fresh cause of action for the respondent-plaintiff to recall DW1 Sarabjit Singh for the purpose of further cross-examination, therefore, the impugned order is not sustainable.

On contrary, Mr. Bhoop Singh, learned counsel appearing on behalf of respondent-plaintiff submitted that in the reply to the application seeking additional evidence, respondent-plaintiff specially reserved the right to cross-examine the defendant in case the additional evidence was to be permitted, though the Court did not specifically grant but impliedly. It is in this background the order was passed with the observation that no prejudice would be caused to the petitioner.

I have heard learned counsel for the parties, appraised the paper book.

The facts noticed above are not disputed. In the order dated 11.5.2015 while allowing the application for additional evidence, there is a categorical averment on behalf of petitioner-defendant that he wanted to produce on record the jamabandi for the year 2004-05 by way of additional evidence as the photocopy of the same had already been placed on record, which was not contested. The aforementioned order has attained the finality. There would have been a force in the argument of Mr. Bhoop Singh, Advocate, had under the garb of the order *ibid*, the petitioner-defendant intended or examined some other witness, which would have necessitated the plaintiff to recall the defendant-witness, in my view the trial Court has remained oblivious of the parameters envisaging the

circumstances for recalling of the witness. The reason given in the application was totally misplaced.

The order under challenge, therefore, is not sustainable, resultantly, the same is set aside and the revision petition stands allowed.

February 08, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No