

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

Civil Revision No.4807 of 2016 (O&M)

Date of decision: May 29, 2018

Joginder Singh and another

...Petitioners

Versus

Dr.Arun Bansal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep K. Sharma, Advocate
for the petitioners.

Mr.Ankush Singla, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners Joginder Singh and Kamlesh Rani have filed this revision petition against respondent Dr.Arun Bansal under Article 227 of the Constitution of India for setting aside the order dated 21.05.2016 passed by learned Civil Judge (Senior Division), Patiala, vide which the application filed by plaintiffs-petitioners under Section 151 CPC for leading additional evidence was dismissed.

Notice of motion was issued. Learned counsel for respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that during the pendency of the suit,

plaintiffs-petitioners filed an application under Section 151 CPC for leading additional evidence. It is submitted before the lower Court that the plaintiffs want to summon Dr.J.S.Boparai, MD, Radiodiagnosis at Narula's City X-ray, Ultrasound and CT Scan, who had conducted CT Scan of Devinder Singh, son of plaintiffs on 14.08.2006. The said evidence could not be recorded earlier inadvertently. The said CT Scan report is very much necessary for just and proper decision of the case. This application was contested by the defendant by filing reply, wherein, it is stated that earlier an application was also moved by the plaintiffs for the same purpose and now, the present application has been filed to delay the proceedings of the present case. It is further stated that plaintiffs have already availed sufficient opportunities to lead evidence and evidence of the plaintiffs was closed by order.

Learned Civil Judge (Sr. Divn.) Patiala, vide order dated 21.05.2016 dismissed the application.

Aggrieved from the above-said order, present revision petition has been filed.

As argued, the suit of the plaintiffs is for recovery of ₹3 lakhs being indigent person on account of compensation qua death of son of the plaintiffs due to negligence of respondent-defendant. The copy of CT Scan report has already been exhibited during the statement of the plaintiff but as per law, this CT Scan report is to be proved by bringing the doctor, who conducted the CT Scan. The plaintiffs want to examine Dr.J.S.Boparai, who conducted the CT Scan. This evidence, which the plaintiff wants to produce as additional evidence is essential and necessary for the just decision of the case. It is settled law that rights of the parties should be

determined on merits as far as possible and the Court should do substantial justice between the parties and should not go into the technicalities of law. If the doctor is not examined by the plaintiffs, no reliance would be put on CT Scan report and plaintiffs will suffer irreparable loss. As regarding respondent-defendant, no prejudice is going to be caused as he would get an opportunity to cross-examine the witness and further to rebut this evidence by producing witnesses in his defence.

As regarding earlier application, learned counsel for the petitioners contended that earlier the plaintiffs have given the name of doctor, whose name was there on the report but the report bears the signatures of Dr.J.S.Boparai and therefore, the said application was withdrawn and application in question was filed for summoning Dr.J.S.Boparai. In view of the contention of learned counsel for the petitioners, I find that earlier withdrawal of the application has no effect on merits while deciding the present application.

The perusal of the record shows that as the evidence is very much necessary for the just decision of the case, therefore, the impugned order dated 21.05.2016, passed by learned Civil Judge (Senior Division), Patiala, dismissing the application, is set aside. The application filed by the plaintiffs-petitioners for leading additional evidence is allowed. Further, petitioners-plaintiffs are directed to conclude their evidence on two effective opportunities by taking dasti summons.

Therefore, present revision petition stands allowed accordingly.

May 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No