

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

CR No.5075 of 2015 (O&M)
Date of decision : 13.03.2018

Sunita and others

...Petitioners

Versus

Vinod Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kartar Singh Malik, Advocate for the petitioners.

Mr. N.K. Malhotra, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The defendants-petitioners are in the revision petition against the orders dated 07.02.2015, 27.05.2015 and 27.07.2015 passed by the trial Court.

The defendants-petitioners after having closed the evidence filed two applications for leading additional evidence, one for her own examination and second for producing certain documents by way of additional evidence. Both the applications were taken up together and the learned Court allowed the application for permission to produce certain documents as the counsel for the plaintiff had given no objection, however, the prayer for leading oral evidence was declined. It appears that thereafter, the learned trial Court allowed the defendant-petitioner-Sunita to be examined in the oral evidence by mistake. Her statement was recorded and

she was also permitted to be cross-examined. After the cross-examination was complete, the Court realised that the prayer for oral additional evidence was dismissed. Hence, ordered that the evidence already recorded cannot be read in evidence.

Thereafter, another order was passed by the learned Court, dismissing the application for additional documentary evidence also. It appears that the trial Court was not even conscious of its own orders. On the one hand, the application for permission to produce certain documents in additional evidence was allowed vide order dated 07.02.2015, whereas for same documents, the application for leading additional evidence was dismissed by the order dated 27.07.2015.

The defendant-petitioner has already been examined in evidence. A reading of the order shows that the application for permission to lead additional oral evidence by examination of defendant No.1-Sunita was declined only on the ground that the evidence has been closed by their counsel by making a statement to that effect.

In the considered opinion of this Court, such approach of the Court was wholly wrong. The application for permission to lead additional evidence is filed only after the closure of the evidence by the party or when the opportunity to lead evidence has been closed by order. Hence, the order dated 07.02.2015 declining the prayer of the defendant-petitioner to examine herself in additional evidence, has wrongly been declined. As noted earlier, defendant No.1-petitioner has already been examined and cross-examined. Such being the position, the order dated 07.02.2015 declining the oral additional evidence is allowed.

As noticed earlier, vide order dated 07.02.2015, the Court allowed the documentary additional evidence as counsel for the plaintiff made a statement that he has no objection to the production of the documents. Once the prayer for additional evidence has been allowed, the Court thereafter had no occasion to pass the fresh order on 27.07.2015. The documents sought to be produced in additional evidence have already been produced. The Court would be at liberty to examine its admissibility and mode of proof.

In view thereof, the orders dated 07.02.2015 and dated 27.07.2015 are set aside.

In view of the above, the present revision petition is allowed.

13.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No