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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5069-2016 (O&M)
Date of decision : 22.2.2018

Smt. Sukhvinder Kaur and others **Petitioners**

Versus

Haryana Vidyut Prasaran Nigam Ltd and others **Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Anil Malik, Advocate for
Mr. Gourav Jain, Advocate for the petitioners.

Mr. Vishal Garg, Advocate for respondent No. 1.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

CM-16258-CII-2016

Present application has been filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, for amendment in head note as well as in the prayer clause of the main revision petition.

By way of present application, applicant seeks to challenge the order dated 5.1.2016 (Annexure P-2), passed by the trial Court.

In the interest of justice, application is allowed, subject to just exceptions.

CR-5069-2016

Impugned in the present amended revision petition is the order dated 5.1.2016 (Annexure P-2), passed by learned Additional Civil Judge (Senior Division), Fatehabad, vide which evidence of the plaintiffs-petitioners was closed by order. Further impugned is the order dated 5.5.2016 (Annexure P-4), passed by learned Additional Civil Judge (Senior Division), Fatehabad, vide which application for additional evidence filed

on behalf of the plaintiffs-petitioners was also dismissed.

Heard.

It comes out that suit for damages to the tune of ₹ 15.00 lacs filed by the plaintiffs-present petitioners against Haryana Vidyut Prasaran Nigam Limited and others, is pending in the Court of learned Additional Civil Judge, (Senior Division), Fatehabad.

On 5.1.2016, learned Additional Civil Judge, (Senior Division), Fatehabad, while noticing that no PW is present and also noticing that six opportunities including two last opportunities have been granted, against only three opportunities admissible under the Code of Civil Procedure, 1908, evidence of the plaintiffs was closed by order. The said order was not separately challenged at that point of time and has now been challenged by way of making amendment in the main revision petition, in which earlier only order dated 5.5.2016, passed by learned Additional Civil Judge (Senior Division), Fatehabad was challenged.

An application for amendment was filed on 11.8.2016. A perusal of the impugned order dated 5.1.2016 shows that in the said suit, six opportunities were granted in which on two occasions, last opportunities were granted.

Learned counsel for the petitioners has argued that in the said suit, he has deposited the diet money of two witnesses namely Dr. Vinus Arora, MO, Civil Hospital Fatehabad who had conducted the post-mortem of deceased Lakha Singh on 6.4.2011 and MHC, Police Station Sadar, Fatehabad and that said witnesses have not appeared before the trial Court.

I am of the view that mere deposit of diet money is not sufficient. There is nothing on file to show that plaintiffs pressed for issuance of summons of the said witnesses or took the summons *dasti*.

When after grant of four opportunities, last opportunity was granted on two occasions, plaintiffs-petitioners should have been alerted to ensure that summons for the said witnesses are obtained. Even when his evidence was closed by order on 5.1.2016, no revision was filed. Hence, same is barred by delay and laches. However, later on, now by way of amendment, the said order is sought to be challenged under Article 227 of the Constitution of India.

So far as the order dated 5.5.2016 is concerned, learned trial Court noticed that the evidence of the plaintiffs is closed by order. The said order was not challenged and has now become final by way of additional evidence. The said witnesses cannot be allowed to be summoned. It was also noticed that plaintiffs-petitioners got six effective opportunities including two last opportunities. Thereafter, during the short span of two months, five opportunities were granted to the defendants, apparently, in view of the fact that when case was already more than 3 years old. It was after the grant of five opportunities to the defendants that the application was filed for leading additional evidence.

In view of the above, I do not find any illegality or infirmity in the orders dated 5.1.2016 and 5.5.2016, passed by learned Additional Civil Judge (Senior Division), Fatehabad.

Dismissed.

(KULDIP SINGH)
JUDGE

22.2.2018
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
No