

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

CR No.5078 of 2016 (O&M)
Date of decision: 23rd April, 2018

Anil Ghai

... Petitioner

Versus

Sagar Singh Dua & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. B.S. Bedi, Advocate
for respondent No.1.

FATEH DEEP SINGH, J.

In this civil revision, petitioner Anil Ghai has sought to challenge an order dated 25.05.2016 (Annexure P1) of the Court of learned Civil Judge (Junior Division), Chandigarh whereby the trial Court through impugned findings had allowed the application for producing N.K. Bansal in additional evidence.

Upon hearing Mr. Sanjiv Gupta, Advocate for the petitioner; Mr. B.S. Bedi, Advocate for respondent No.1 and perusing records of the case. The original owner, Anil Ghai present revisionist, entered into an agreement to sell dated 21.08.2006 (hereinafter referred to as, 'the first agreement') with one Sohan Lal Arora, present respondent No.2 and subsequently another agreement took place between Sohan Lal Arora respondent No.2 and Sagar Singh Dua respondent No.1 over the same

very property on 22.01.2007 (hereinafter referred to as, 'the second agreement'), in which one N.K. Bansal, Proprietor of M/s Bansal and Company, was one of the defendants having been instrumental in execution of the first agreement as well as the second one and was a go between in the agreements between the parties. It was during the course of trial, the application in question was moved for examining N.K. Bansal in additional evidence and defendant No.1 had given no objection to the same.

Order XVI CPC, in the light of submissions of learned counsel for respondent No.1 Mr. Bedi, provides for summoning for attendance of witnesses and under Sub-Rule (2) lays down that a party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned, and the High Court amendments of this Court to these provisions needs to be reproduced here to lay emphasis:

“Summons to attend to give evidence or produce documents – At any time after the suit is instituted, the parties may obtain, an application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Provided that no party who has begun to call his witnesses shall be entitled to obtain process to enforce the attendance of any witness against whom process has not

previously issued, or to produce any witness not named in a list, which much be filed in Court on or before the date on which the hearing of evidence on his behalf commences and before the actual commencement of the hearing of such evidence without an order of the Court made in writing and stating the reasons therefor.”

Order XVI Rule 1-A CPC leaves ample scope by way of a rider to sub-rule (3) of Rule 1 that any party to the suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents. On behalf of the respondent, Mr. Bedi has sought to place reliance on ‘**Chandgi v. Mehar Singh & others**’ 1998(2) **Civil Court Cases 280 (P&H)** to support his contentions.

Though the same is sought to be opposed by learned counsel for the petitioner on the grounds that N.K. Bansal happens to be one of the defendants and that there has been immense controversy over the fact as to whether he is a necessary party or an essential party and for which innumerable petitions/legal processes have been agitated by the parties to this Lis and even the application under Order I Rule 10 CPC for deleting his name from the array of parties was moved. However, it is not displaced by learned counsel for the petitioner Mr. Gupta that the Court below had recorded the examination in-chief and cross-examination of this witness who admittedly is a witness to both these agreements, and thus a material witness to unfold this controversy between the parties to enable the Court to comprehensively and judiciously adjudicate on this

dispute and would be of much assistance to the trial Court in coming to a legitimate conclusion and even one of the revisions filed by the present petitioner regarding examination of N.K. Bansal has been dismissed as withdrawn, are matters which certainly cause much prejudice to the case of the present petitioner. The material question that comes to the mind of this Court that by already examining this witness by the trial Court at this juncture would render these arguments otiose and would not sub-serve any purpose and it would be only on merits the trial Court would be able to conclude as to whether the evidence needs to be read in the light of these objections and counter-objections. Omission of Order XVIII Rule 2(4) CPC by amendment does not take away the Court's inherent powers to call for any witness at any stage either suo-motu or on the prayer of the party invoking inherent jurisdiction of the Court. Since erstwhile defendant N.K. Bansal happens to be witness to both these agreements, he would be the best person to throw light on these two vital documents which are crucial axis upon which case of the two sides revolves and would also be able to assist the Court as to the extent to which by virtue of second agreement power has come into the hands of the present plaintiff.

The Court below in the impugned findings had given a well reasoned finding that N.K. Bansal who was erstwhile defendant No.3 and whose name had been struck off from the array of parties, is a necessary witness to be examined and has rightly allowed the evidence for judicious

adjudication. Learned counsel for the revisionist petitioner could not pinpoint or highlight any irregularity or perversity in the impugned findings. The revision petition being hopelessly without merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

April 23, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No