

(115) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5827 of 2018

Date of decision: 19.09.2018

M/s Kartikey Indo Agritech Pvt. Ltd.
Versus

.... Petitioner

M/s Guru Kirpa Cold Store

.... Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. B.R. Rana, Advocate for the petitioner.
Mr. Parveen K. Kataria, Advocate for the respondent.

B.S. WALIA, J. (ORAL)

[1] Revision petition has been filed challenging order dated 23.08.2018 passed by the learned Civil Judge (Junior Division), Moga dismissing petitioner defendants application Annexure P/3 dated 13.08.2018 seeking permission to lead additional evidence.

[2] Brief facts of the case are that the petitioner/defendant had moved application Annexure P/3 for permission to lead additional evidence after defence evidence was over and the case was fixed for arguments, for production and proving the following documents:-

- “(a) Self attested computerized copy of Bill Invoice No.388 dated 25.11.2011 of Rs.665000/- for sale of 1900 bags of potato seeds by defendant to plaintiff,
- (b) Attested Balance Sheets cum Reports of M/s Kartikey Indo Agritech Pvt. Ltd., for the years 2010-11 to 2014-15,
- (c) Attested Balance Sheets cum Reports of M/s Kaups Online Trading Private Limited, Aligarh, for the years 2015-16 and 2016-17”.

[3] Application Annexure P/3 was moved on the ground that the petitioner/defendant had specifically pleaded having sold 1900 bags of potatoes to the respondent/plaintiff for a sum of ₹ 6,65,000/- and a sum of ₹ 2,27,675/- was recoverable from the respondent/plaintiff after deducting the amount payable by the petitioner/defendant to the respondent/plaintiff, that the petitioner/defendant had already produced copy of computerized account statement of respondent/plaintiff as Ex.D-57, however, due to bona fide mistake of petitioner/defendant as well as its previous counsel, computerized copy of Bill, Invoice No.388 dated 25.11.2011 of ₹ 6,65,000/- pertaining to sale of 1900 bags of potato seeds by the petitioner/defendant to the respondent/plaintiff and balance sheets-cum-reports of the petitioner/defendant for the years 2010-11 to 2014-15 and balance sheets-cum-reports of M/s Kaups Online Trading Private Limited, Aligarh, for the years 2015-16 and 2016-17 could not be produced and the aforesaid documents contained entries which clearly showed that the petitioner/defendant had sold 1900 bags of potato seeds to the respondent/plaintiff firm for ₹ 6,65,000/- and that in the circumstances, the petitioner/defendant was to recover ₹ 2,27,675/- from the respondent/plaintiff.

[4] The application for additional evidence was dismissed by the learned Civil Judge (Sr. Div.), Moga on the ground that the documents sought to be produced and proved were in the knowledge of the petitioner/defendant from the day it had first filed written statement and the defence was also known, on the basis of the lines of defence, the petitioner/defendant conducted cross-examination of the respondent/plaintiff where after the petitioner/defendant led its own evidence and during cross-examination of DW-1 and DW-2, specific questions were put regarding sale

produced despite knowledge /possession of the same since the inception of the trial and now at the fag end of the trial, the petitioner/defendant wanted to fill up the lacunae. The learned trial Court by relying upon the decision of Hon'ble Delhi High Court in **Gulati v. Suraj, 2016 (1) CCC and Jai Singh v. Shakuntla, AIR 2002 Supreme Court 1428** dismissed the application on account of delay in filing the same as well as on account of previous knowledge of the petitioner/defendant, besides, by observing that if the same was allowed, the same would tantamount to allowing filling up of lacunae.

[5] Learned counsel for the petitioner/defendant has relied upon paragraph No.8 of the decision of this Court in **Jaipal v. Hari Dass and others, 2017 (1) Law Herald 539**. Relevant extract of the same is reproduced as under:-

“8. It is a settled principle of law that it is duty of the Court to come to a definite conclusion and to see whether the additional evidence to be adduced is necessary to reach to the right decision or not. The Court is having power to permit fresh evidence in case the evidence to be adduced by either of party is relevant for just decision of the case but there should be valid reasons for that. It was held by Hon'ble the Apex Court in the case of **K.K. Velusamy v. N. Palanisamy, 2011 (3) Law Herald (SC) 2036** that by recording valid reasons, appropriate cost can be awarded to the other party to compensate for the delay and in case the application is found to be mischievous or frivolous or to cover up negligence or lacunae, it should be rejected with heavy cost. If additional evidence is found to be non-genuine or irrelevant, exemplary cost be awarded apart from prosecution, if it involves fabrication of evidence.”

[6] Learned counsel for the respondent/plaintiff on the other hand has relied upon paragraph Nos.10 and 11 of the decision of Hon'ble the

Supreme Court in **M/s Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai v. M/s Gupta Building Material Store, 2013 (14) SCC 1** to contend that power under Section 151 and Order 18 Rule 17 of the CPC was not intended to be used routinely and merely for the asking, secondly that the application seeking permission to lead additional evidence, was required to satisfy the Court that non-production earlier was for valid and sufficient reasons. Thirdly, that if the application was found to be mischievous, or frivolous, or to cover up negligence or lacunae, it was to be rejected with heavy costs. Paragraph Nos.10 and 11 of the decision in **M/s Bagai Construction's case (supra)** are reproduced as under:-

“10) In **Velusamy (supra)** even after considering the principles laid down in **Vadiraj Naggappa Vernekar (supra)** and taking note of Section 151 CPC, this Court concluded that in the interests of justice and to prevent abuse of the process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to

recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

With these principles, let us consider the merits of the case in hand.

11) The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed

those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted.

[7] I have considered the submissions of learned counsel for the parties. Admittedly, no satisfactory explanation has been given for earlier non-production of the record now sought to be produced nor can the plea put forth for non-production i.e. inadvertence be treated as sufficient ground, rather the same denotes absence of due diligence and can be said to be an attempt to cover-up negligence and to fill up the lacunae. The decision in M/s Bagai Construction’s case (supra) is very categoric that a party cannot be allowed to file an application to fill up the lacunae in its pleadings and the evidence led by it. Not only has evidence of the parties been led but the case is also at the arguments stage, therefore, in the light of the position as noted above, I do not find any circumstance warranting interference with the well-reasoned order passed by the learned Civil Judge (Jr. Div.), Moga.

[8] Accordingly, the Civil Revision petition is dismissed.

(B.S. Walia)
Judge

19.09.2018
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