

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

CR No.618 of 2018

Date of Decision:01.02.2018

Dera Baba Bhauri Wala

.....Petitioner

Vs.

Gaay Sewa Samiti (Regd.) and othersRespondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Vivek Salathia, Advocate for the petitioner.

RAMENDRA JAIN, J. (Oral)

Through the instant revision petition filed under Article 227 of the Constitution of India, challenge has been laid to the order dated 06.12.2017 of the trial Court, whereby it has dismissed the application of the petitioner- plaintiff under Order 8 Rule 1-A and Order 13 Rules 1, 3, 4 and 6 read with Section 151 CPC.

In nutshell, the petitioner filed a suit for declaration to the effect that respondent No.1 being a self styled fictitious Samiti had no right to interfere into the affairs of the petitioner and thus it be restrained from doing so.

After completion of the pleadings and framing of issues, the petitioner concluded its evidence. To rebut the evidence of the petitioner, the respondents examined four witnesses, who were duly cross-examined by the petitioner. Thereafter, respondent No.4- Ashok Grover appeared as DW5 and tendered affidavit into his evidence in affirmative along with documents Ex.DW5/1 to DW5/153. Raising objection to the production of

the aforesaid documents Ex.DW5/1 to Ex.DW5/153, the petitioner filed an application under Order 8 Rule 1-A and Order 13 Rules 1, 3, 4 and 6 read with Section 151 CPC pleading: (i) that the said documents were inadmissible in evidence being not legally proved and thus could not have been exhibited without their formal proof, (ii) The trial Court ought not to have permitted the respondents to produce the same as they were never disclosed by them while filing their written statement nor their copies were annexed with the written statement.

After obtaining reply and hearing both sides, the trial Court vide impugned order dated 06.12.2017 dismissed application of petitioner for the following reason:-

(i) the plaintiff has an occasion to raise objection qua admissibility and mode of proof of the documents i.e. Ex.DW5/1 to DW5/153 tendered alongwith the affidavit in examination in chief at the time of cross-examination of the witness introducing those documents, but not in the manner and mode of moving an application. There is no provision in the Civil Procedure Code for de-exhibiting the document.

Learned counsel for the petitioner relying upon a judgment of Hon'ble the Supreme Court in case **Shalimar Chemical Works Ltd. v. Surendra Oil & Dal Mills (Refineries) & others**, 2010(8) SCC 423, a judgment of Gauhati High Court in case **Subhash Trading Co. & Ors. v. Amolok Chand Surana**, 2011(16) R.C.R. (Civil) 162 and a judgment of this Court in case **Darshan Singh and others v. Gulzar Singh and others** - CR No.3566 of 2012 decided on 11.11.2014, contends that since the

documents Ex.DW5/1 to Ex.DW5/153 were not annexed with the written statement by the respondents, therefore, the trial Court should not have allowed the respondents to produce the same alongwith affidavit of DW5 without prior permission. The aforesaid documents could not have been exhibited by the trial Court without their formal proof.

Having given considerable thoughts to the submissions made by learned counsel for the petitioner, I find the instant revision petition as completely devoid of any merit for the reasons to follow:-

The provisions of Order 8 Rule 1-A and Order 13 Rules 1, 3, 4 and 6 read with Section 151 CPC are directory in nature and not mandatory. No litigant can be non-suited on account of not strictly following the aforesaid provision.

The facts and circumstances of **Darshan Singh and others v. Gulzar Singh and others** - CR No.3566 of 2012 decided on 11.11.2014 relied upon by learned counsel for the petitioner are quite distinguishable from the facts of the present case inasmuch as in that case, the controversy between the parties revolved around a Will which was not produced at the time of filing of the plaint. However, in the said case, a decision of this Court dated 30.09.2014 in CR No.6812 of 2013 – **Aggarwal Vidya Pracharni Sabha v. Municipal Corporation Faridabad and another,** dealing with Order 8 Rule 1-A, and Order 11 Rule 15 of the CPC was discussed and relied upon, wherein it was held that there is no absolute rule that if the documents referred to in the pleadings much-less the written statement is not attached, it cannot be produced in evidence lateron, as the discretion vests with the Court to receive such a document by granting

permission to the party to the suit, as the case may be.

It was also held that according to Order 8 Rule 1-A (3) of the CPC, if the document, which ought to be produced in the Court by the defendant and is not so produced, can be received in evidence during the hearing with the leave of the Court. Similarly in Order 11 Rule 15 of the CPC also, discretion has been given to the Court to grant leave to give opportunity to take the documents in evidence afterwards. The plaintiff cannot compel the defendant to produce documents with the written statement which could later on be produced in evidence subject to leave of the Court. To the above extent, the above referred decision instead of helping goes against him.

Another judgment of Gauhati High Court in **Subhash Trading Co. & others v. Amolok Chand Surana**, was also discussed, wherein it was held that material documents can be placed on record with the leave of the Court. Such document exhibited without leave of the Court would be inadmissible in evidence.

In the instant case, main grouse of the petitioner is that the trial Court ought not to have exhibited the documents produced by DW5 along with his affidavit, because the same were never disclosed or relied upon by the respondents at the time of filing of their written statement.

I find no force in the said submission for the simple reason that mere exhibition of a document by in itself does not dispense with its formal proof, unless the same is formally proved. Mere exhibition of a document is only for the purpose of identification of the document. A document filed by a party and exhibited by the Court do not become part of the original

record at the time of its production, rather it become, the part of the record after its formal proof.

The facts and circumstances of the Shalimar Chemical Works Ltd.'s case (supra) are not identical to the facts of the present case, therefore, no benefit whatsoever of the same can be given to the petitioner.

The trial Court has rightly held that the plaintiff has an occasion to raise objection qua the admissibility and mode of proof of the above referred documents tendered along with the affidavit in examination-in-chief of DW5 at the time of cross-examination of the witness introducing those documents. Therefore, no prejudice is going to be caused to the petitioner in case of exhibition of the documents referred to above which would be considered by the trial in evidence only after their formal proof, inasmuch as the trial Court is conscious of the fact that the formal proof of the documents is required to be produced by the respondents and further as to whether these documents are to be considered in evidence at the time of final adjudication or not.

In view of the above discussion above, the petition is dismissed.

February 01, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No