

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

CR No.6745 of 2018

Date of Decision : 05.10.2018.

Dinesh Raj

...Petitioner

versus

Updesh Rawal alias Dolly Batra and others

...Respondents

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

Present: Mr. H.P.S. Aulakh, Advocate
for the petitioner.

B.S.WALIA, J. (Oral)

1. Challenge in the revision petition is to order dated 26.09.2018, passed by the learned Civil Judge (Junior Division), Karnal, in Civil Suit No.144 of 2015, dismissing application dated 10.09.2018 (Annexure P-5) for leading additional evidence.

2. Brief facts of the case are that the petitioner-defendant had filed an application under Section 151 CPC for leading additional evidence, which was dismissed vide order dated 21.08.2018. The said order was assailed by the petitioner-defendant by filing Civil Revision No.5826 of 2018 before this Court and the same was disposed of by this Court vide order dated 04.09.2018, with liberty to the petitioner to move appropriate application before the learned trial Court. Thereupon the petitioner approached the learned trial Court by way of application dated 10.09.2018,

for permission to place on record copy of judgment and decree dated 01.02.2000, passed in civil suit No.482 of 1990, titled *Harish Chander vs. Jaswant Kaur*, by way of additional evidence, however the said application was dismissed vide impugned order dated 26.09.2018, on the ground that earlier also the petitioner had moved an application for additional evidence to examine Shri Jai Parkash, Advocate, Notary Public, Karnal, to prove the execution of agreement Ex.DW6/A, however, the same was withdrawn by the petitioner on 06.08.2018 with the sole motive to shortcut the trial and to save the time of the Court. Thereafter, another application was moved for additional evidence for placing on record judgment and decree dated 01.02.2000, by stating therein that he would not move any other application for leading additional evidence. However, as has been noted above, the same was dismissed on 21.08.2018.

3. The said application was opposed on the ground that additional evidence was not required for the adjudication of the case, petitioner had availed many opportunities including last opportunity to conclude evidence and eventually evidence of the petitioner was closed vide Court order dated 31.07.2017. Civil Revision filed by the petitioner against order dated 21.08.2018 had been withdrawn with liberty to move appropriate application before the learned trial Court and the same did not constitute permission of the High Court to the petitioner to lead proposed evidence. Therefore, no case was made out to allow the application filed by the petitioner for leading additional evidence. Learned counsel merely contended that the document sought to be produced on record by way of additional evidence is essential for the just adjudication of the case.

4. I have considered the submissions of learned counsel for the petitioner.

5. Admittedly, eleven effective opportunities were availed by the petitioner for leading evidence, whereafter his evidence was closed vide order dated 31.07.2017. On query, learned counsel for the petitioner admitted that order closing the evidence of the petitioner dated 31.07.2017 was not challenged by the petitioner. In Saroj vs. Charan Singh and others 2017 (4) PLR 674, by relying upon the decision in Bhim Raj and others vs. Jai Bhagwan and others 2000(2) LJR 469 (P&H) and Chand Singh vs. Naranjan Singh and another 1990(1) LJR719 (P&H), this Court has held that where evidence was closed by Court order and said order was not challenged, then said party could not make an application for additional evidence. In this case, eleven opportunities were availed by the petitioner for leading evidence, whereafter the evidence of the petitioner was closed on 31.07.2017. The case was thereafter fixed for rebuttal and arguments and then the petitioner moved application for leading additional evidence without disclosing as to when he get the information about the judgment and decree of the year 2000. Although the petitioner has tried to project in the application at Page No.46 of the paperbook that he learnt about the judgment and decree of the year 2000 when he and his counsel were inspecting the record room register to know about the earlier litigation between Amar Nath and his family members, however, what compelled the petitioner to carry out the inspection of the record just few days prior to the date of filing of the application despite filing of the written statement in the year 2015, does not disclose exercise of due diligence, which is a *sine qua*

non for an application to lead additional evidence. Neither has it been mentioned on which date the inspection was carried out nor has any proof in respect of inspection having been carried out been placed on the record. Apparently, the application was moved with a view to get the case reopened and to avail another opportunity to lead evidence. Besides apart from there being absence of due diligence, the petitioner failed to challenge the order closing his evidence.

6. In the light of the position as noted above, I do not find any infirmity with order dated 26.09.2018, passed by the trial Court. Accordingly, revision petition is dismissed in limine.

(B.S.WALIA)
JUDGE

05.10.2018
rajesh.k.khurana

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