

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

**Civil Revision No.7623 of 2016 (O&M)
Date of Order:20.02.2018**

Nachattar Singh

..Petitioner

Versus

M/s Vikas House Building Co. Pvt. Ltd. and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Mohan Gupta, Advocate,
for the petitioner.

Mr. Gaurav Rana, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

In this revision petition, the only issue raised is whether an affidavit submitted in the Court in lieu of examination-in-chief in terms of Order 18 Rule 4 can be permitted to be supplemented particularly when some facts stated in the affidavit are against the record.

It is not in dispute that after submission of the affidavit, cross-examination of the witness had not started on the day the application was filed for filing a supplementary affidavit. The fact which is sought to be altered by way of supplementary affidavit is about the death of Hukam Singh. In the plaint, it was asserted that the agreement dated 22.12.2000 was executed by Hukam Singh. However, in the affidavit, which was initially filed, a wrong assertion was made that Hukam Singh has died before execution of the agreement to sell dated 22.12.2000. Plaintiff wanted to correct the aforesaid factual mistake. It was asserted that even in the pleadings, it is not in dispute that Hukam Singh was alive on the day the agreement to sell dated 22.12.2000 was executed.

Learned counsel for the petitioner has vehemently argued that

once an affidavit has been tendered in evidence, the Court cannot permit any alteration thereof. He submits that even a supplementary affidavit is not permissible.

In the considered opinion of this Court, it would always depends upon the facts and circumstances of the case. The Court is entitled to examine whether the supplementary affidavit is changing the facts materially or not. The Court is also required to see whether the supplementary affidavit sought to be submitted is only clarificatory and is trying to correct the inadvertent mistake which has happened due to oversight or not.

In the present case, the learned trial Court has considered this error to be an inadvertent mistake and, therefore, the Court has permitted the plaintiff to submit the supplementary affidavit.

Learned counsel for the petitioner has relied upon the judgment passed by the Andhra Pradesh High Court reported as **Mohammed Abdul Ahad v. Mohammed Abdul Gafoor, 2013(2) ICC, 808.** He has referred to paragraphs 8 and 10 of the aforesaid judgment. The facts of the judgment cited are that the plaintiff after submitting the affidavit wanted to withdraw the earlier affidavit and substitute with the entirely new one on change of counsel. The observations made by the Court are in those circumstances. In the present case, the facts are entirely different.

In view therefore, there is no scope for interference in the orders passed by the trial Court.

The revision petition is dismissed.

Note: All misc. applications stand disposed of accordingly.

February 20, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No