

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

Civil Revision No.8258 of 2017 (O&M)

Date of decision: May 24, 2018

Municipal Corporation Hisar and another

...Petitioners

Versus

Dilawar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Adrija Das, Advocate for
Mr.Amar Vivek, Advocate
for the petitioners.

Mr.Vivek Khatri, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners Municipal Corporation, Hisar and Deputy Commissioner, Hisar have filed this revision petition against respondent Dilawar Singh under Article 227 of the Constitution of India for setting aside the order dated 27.07.2017 passed by learned Civil Judge (Junior Division), Hisar, whereby the application moved by petitioners for leading additional evidence was dismissed.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Dilawar Singh, plaintiff filed a suit

against defendants Municipal Corporation, Hisar and Deputy Commissioner, Hisar for permanent injunction restraining the defendants from demolishing/sealing any part of property plot No.8 and 8-A, situated at Het Ram Park, Jat College Road, Hisar with consequential relief of mandatory injunction directing the defendants to regularize the excess construction raised by the plaintiff on the above-said plot by charging compounding fees as per law. During the pendency of the suit, an application was filed by defendant No.1 for leading additional evidence, wherein, it is stated that Commissioner, Municipal, Corporation, Hisar, delegated the power to the officials of M.C.Hisar under Section 49 read with Section 401(2). Such order, as delegation of power for the year 2014-15 as issued by the Commissioner, M.C. Hisar is very much necessary to be produced before this court for the just decision of the case. It is further stated that defendant No.1-applicant could not produce the same despite due diligence in the evidence of the defendant and the evidence of the defendant was closed by court order. This fact came into notice of the defendant-applicant when the case was fixed for arguments by the Court.

In reply, the plaintiff submitted that Commissioner, M.C.Hisar never delegated the alleged power to the officials of M.C.Hisar. The defendants' evidence was closed by Court order after giving several opportunities to the defendants and that order was not challenged by the defendants by way of any revision or otherwise and the said order has become final.

Learned Civil Judge (Jr. Divn.), Hisar vide order dated 27.07.2017, dismissed the application. Aggrieved from the above-said order, present revision petition has been filed.

From the record, I find that present petitioner-defendant No.1 wants to produce the order vide which the Commissioner, Municipal Corporation, Hisar, has delegated the power of the officials of M.C. Hisar under Section 49 read with Section 401(2). The evidence of the defendants has been closed by Court order. This document is essential and necessary for the just decision of case and to determine the rights of the parties substantially and finally. No prejudice is going to be caused to the plaintiff as they will get opportunity to rebut this evidence. It is settled law the rights of the parties should be determined on merits as far as possible and the Court should not go into the technicalities of law. The procedural law is meant to advance justice dispensation and not to scuttle judicial process. The opposite party can also be compensated by way of costs, if delay is caused by the act of a party.

As the evidence, which defendant No.1 wants to produce, is necessary for just decision of the case, therefore, one effective opportunity is granted to petitioner-defendant No.1 to produce the additional evidence at own responsibility, subject to costs of ₹5,000/- to be paid to plaintiff-respondent. The plaintiff will also be given opportunity to rebut the evidence, if so desired.

In view of the above observations, the present petition stands allowed.

May 24, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No