

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

CR No.1682 of 2018

Date of decision: 27.08.2019.

Malkeet Singh

...Petitioner

versus

Charno and others

...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. R.V.S. Chugh, Advocate for the petitioner.

Ms. Amanpreet Kaur, Advocate for respondents.

B.S. Walia, J.,

1. Prayer in the revision petition is for setting aside order Annexure P/6 dated 10.01.2018, passed by the learned Addl. Civil Judge (Senior Division), Mansa, allowing application Annexure P/4 dated 16.10.2017, filed by respondent No.1/defendant No.1 for producing original Will along with additional affidavit of witness Kashmir Singh.

2. Learned counsel contended that earlier application moved by respondent No.1/defendant No.1 that she wanted to tender additional affidavit for producing original Will No.89 dated 20.05.2014 on record was allowed vide order dated 19.9.2017 but instead of complying with the same or seeking extension of time, respondent No.1/defendant No.1 moved application Annexure P/4 dated 06.10.2017 for the same relief and the same was allowed by the learned trial Court without noticing the previous order and that even if the same was to be allowed, it ought to have been subject to exemplary costs.

3. Learned counsel for respondent No.1/defendant No.1 on the other hand contended that earlier application Annexure P/1 dated 24.07.2017 was filed by her on the ground that she had produced her affidavit in examination in chief in Court but due to unavoidable reasons could not produce original Will No.89 dated 20.05.2014 in her evidence. Consequentially, the application was allowed vide order Annexure P/3 dated 19.09.2017, whereas application Annexure P/4 dated 06.10.2017 no doubt was filed by respondent No. 1/defendant No. 1 only but the same was for producing additional affidavit of witness Kashmir Singh and the said application was allowed by taking into account that the case was pending for evidence of the defendants and the defendants had already taken up a stand qua Will No.89 dated 20.05.2014 in the written statement and if additional affidavit of witness Kashmir Singh was allowed to be tendered in evidence, no prejudice would be caused to the petitioner/plaintiff and that ends of justice required that a party must be given a fair chance to prove its case in accordance with law.

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

5. Admittedly, respondent No.1/defendant No.1 took up a stand qua Will No.89 dated 20.05.2014 in the written statement. No doubt DW-Kashmir Singh, was examined in chief and he tendered his affidavit but inadvertently original Will No.89 dated 20.05.2014 was not tendered. The case is still stated to be pending for evidence of the defendants and the original Will would assist the Court in effective adjudication of the case on merits. Technicalities of law should not be allowed to prevail over the interest of substantial justice

which is not be sacrificed for hyper technical pleas based on strict adherence to procedural provisions as procedure is something designed to facilitate justice and further its ends and not act as a penal enactment for punishment and penalties or as a thing designed to trip people up.

6. In view of the position as noted above, ends of justice would be met if the respondent No.1/defendant No. 1 is allowed to file additional affidavit of witness Kashmir Singh in order to enable the controversy between the parties to be effectively adjudicated and a just decision arrived at subject to respondent No. 1 / defendant No. 1 compensating the petitioner plaintiff.

7. Accordingly, impugned order Annexure P/6 dated 10.01.2018 is upheld with the modification that respondent No.1/defendant No. 1 would pay costs of ₹10,000/- to the petitioner. Revision petition disposed of as above.

27.08.2019
rajesh.k.khurana

(B.S. Walia)
Judge

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