

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

Civil Revision No.2041 of 2018 (O&M)

Date of Decision: 29.03.2019

V.K. Mantro & Son (HUF) and othersPetitioners

Vs

M/s Select Global Hotel Pvt. Ltd. and others....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. G.S. Bal, Sr. Advocate with
Mr. ADS Bal, Advocate
for the petitioners.

Mr. Sanjay Vij, Advocate
for respondent No.1.

Mr. S.S. Kapoor, Advocate for
Mr. Kunal Dawar, Advocate
for respondents No.3 to 5.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 21.03.2018 passed by the Civil Judge (Jr. Divn.) Gururgam, vide which application for additional evidence filed by the plaintiff/respondent No.1 was partly allowed.

[2]. Brief facts are that the plaintiff filed a suit for permanent injunction and recovery against the defendants/petitioners and proforma respondents. Evidence of the plaintiff was concluded in affirmative thereafter defendants also concluded their defence evidence. In rebuttal evidence, the plaintiff availed several opportunities and the same was ultimately closed by order of

the Court dated 28.02.2018. Arguments were heard on 28.02.2018 and the case was adjourned for 01.03.2018 for pronouncement of judgment. On 01.03.2018, the judgment was not pronounced as the same was not ready. For pronouncement of judgment the case was adjourned to 05.03.2018. On 05.03.2018 (though in Annexure P-5 date has been wrongly recorded as 01.03.2018), the following order was passed:-

“Presence: Shri J.K. Dang, Advocate for plaintiff

Shri Satish Kumar, Advocate for defendants No.1 to 3.

Shri Sandeep Aneja, Advocate for defendants No.4 to 7.

Today the case was fixed for pronouncement of judgment. However, Id. Counsel for both sides appeared and requested an adjournment for additional arguments on the aspect of rate of maintenance charges as claimed by the plaintiff. Heard. Allowed arguments shall be heard on 07.03.2018.

Sd/-

Date of order:-01.03.2018 Civil Judge (Jr. Divn.) Gurugram”

[3]. Thereafter on 09.03.2018, an application for additional evidence came to be filed by the plaintiff vide which plaintiff sought to adduce additional evidence of as many as 30 documents at the stage of pronouncement of judgment after hearing additional arguments.

[4]. The application was opposed by the petitioners/ defendants No.1 to 3. It was specifically pleaded that on 07.03.2018, when both the counsel appeared before the trial

Court, learned Judge asked a specific query from the learned counsel for the plaintiff that neither they have placed the invoices of maintenance bills on the file, nor they have submitted any record showing that they paid the service tax to the Government collected from the occupants of the building. It was further pleaded that the Court specifically asked the plaintiff that the statement of account and other electronic record /documents placed on the file were not proved by the plaintiff in accordance with law and the Court directed the plaintiff that the electronic record be got proved through certificate under Section 65-B of the Evidence Act by producing additional evidence particularly in view of precedent titled 'Anvar P.V. vs. P.K. Basheer & Ors., 2014(3) 567 SC'. The trial Court was requested to give two days time to the plaintiffs to file the application. The application was vehemently opposed by the petitioners/defendants No.1 to 3 on the ground that at the stage of pronouncement of order, the plaintiffs cannot be allowed to fill lacuna in its case, particularly when the documents in question were very much in the knowledge and custody of the plaintiff and the case was specifically adjourned for additional arguments only. Even the plaintiff did not lead evidence in rebuttal and the same was closed by order of the Court. Petitioners have even denied the consent appearing in the order

dated 05.03.2018 for additional arguments.

[5]. Vide the impugned order, the trial Court granted indulgence in favour of the plaintiff and allowed the application for additional evidence at the stage of pronouncement of judgment after hearing additional arguments.

[6]. At the time of issuance of notice of motion on 27.03.2018, following order was passed by the Co-ordinate Bench of the Court:-

“Mr. G.S. Bal, learned Senior Counsel assisted by Mr. Tarun Singhal, learned counsel for the petitioners has drawn the attention of this Court to the order dated 28.02.2018, whereby the trial Court heard the arguments and adjourned the matter to 01.03.2018 for pronouncement of the judgment, but on 01.03.2018, judgment was not pronounced as the same was not ready and shall be pronounced on 05.03.2018. On 05.03.2018, learned counsel for both sides appeared and requested an adjournment for additional arguments and the matter was adjourned to 07.03.2018. On 07.03.2018, the matter was further adjourned to 09.03.2018. However, on the next date i.e. on 09.03.2018, an application was moved by the plaintiff to bring on record certain documents by way of additional evidence, which in the absence of any rebuttal evidence cannot be permitted to be taken.

He further submits that on 05.03.2018, no such request was made for additional arguments.

Notice of motion for 09.05.2018.

Process dasti as well.

In the meantime, operation of the impugned order shall remain stayed.”

[7]. Learned Senior counsel for the petitioners submitted that the case was already fixed for pronouncement of judgment. There was no such consent given by the petitioners as recorded in the order dated 05.03.2018. Perusal of the impugned order in view of reply to the application filed by the petitioners is suggestive of the fact that the same is the result of illegal exercise by the trial Court.

[8]. In the context of order dated 05.03.2018, learned Senior counsel further submitted that the case has been opened despite the fact that the plaintiff could not lead any evidence in rebuttal and the same was closed by order of the Court.

[9]. Learned Senior counsel further submitted that even if the petitioners have not approached the same Court for correction of the order dated 05.03.2018, but the rigor of order dated 05.03.2018 did not permit the plaintiff/respondent No.1 to reopen the case by way of seeking production of 30 documents by way of additional evidence. The permission was only to make additional arguments in continuation of earlier order vide which the case was kept for pronouncement of order. The scope of the orders dated 28.02.2018 and 01.03.2018 passed by the trial Court cannot be enlarged for any such consideration on the application for additional evidence which would lead to filling of lacuna in the case by the plaintiff.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. It is true that in the event of denial of the subject matter of order dated 05.03.2018, the petitioners were required to approach the same Court, rather the only course available with the petitioners was to approach the trial Court for getting the record corrected. In view of law laid down by the Hon'ble Apex Court in **State of Maharashtra vs. Ramdas Shrinivas Nayak and another, 1982 AIR (SC) 1249; Commissioner of Customs, Mumbai vs. Bureau Veritas and others, (2005) 3 Supreme Court Cases 265; Jagvir Singh & Ors. vs. State (Delhi Admn.), 2007(3) R.C.R. (Civil) 375 and Om Parkash vs. Principal, Government Sr. Secondary School, Nilokheri and others, 2012(19) R.C.R. (Civil) 279**, in the event of finding of error in recording the order, it was incumbent upon the petitioners to move an application for correction before the trial Court. Having not done so, the petitioners cannot be permitted to raise any pointed finger against the order dated 05.03.2018.

[12]. The Court becomes *functus officio* only after pronouncement of judgment. In the instant case, the case was fixed for pronouncement of judgment. In **case of K.K. Velusamy vs. N. Palanisamy, (2011) 11 Supreme Court**

Cases 275, the case was at the stage of part arguments. In **Ashok Tayal and others vs. Municipal Council, Hisar, 207(1) PLJ 550** the case was at the stage of rebuttal and arguments. The stages of the aforesaid cases were different than the stage in the present case. After closing the evidence in rebuttal vide order dated 28.02.2018, the arguments were heard and the case was fixed for pronouncement of judgment on 01.03.2018. Since the judgment was not ready on 01.03.2018, therefore, the case was further adjourned to 05.03.2018 for the same purpose. Only additional arguments in view of order dated 05.03.2018 were allowed in the context of facilitating the Court to pronounce the judgment in an effective manner. The order dated 05.03.2018 cannot be stretched beyond the aforesaid connotation, particularly when rebuttal evidence of the plaintiff was closed on 28.02.2018 by order of the Court and the said order has already attained finality in the absence of any challenge to the same.

[13]. By way of additional evidence, order dated 28.02.2018 passed by the trial Court cannot be superseded and the Court cannot circumvent the same by indirect mechanism. The ratios of **K.K. Velusamy** and **Ashok Tayal's** cases (supra) are somewhat different and rather the same are not attracted to the present case. Even if production of certificate under Section

65-B of the Evidence Act is held to be directory. In view of **Shafhi Mohammad vs. State of Himachal Pradesh, (2018) 2 Supreme Court Cases 801**, the proposition cannot dilute the rigor of orders dated 28.02.2018, 01.03.2018 and 05.03.2018 passed by the trial Court to attract any such effort to reopen the case which was already fixed for pronouncement of judgment and for limited additional arguments to facilitate the Court to pronounce the judgment in an effective manner. The respondent No.1 cannot be permitted to circumvent the order dated 28.02.2018 without there being any lawful challenge to the same at any point of time.

[14]. The power under Section 151 CPC or Order 18 Rule 17 CPC cannot be used in routine merely on the asking of the parties. The action of the plaintiff cannot be termed to be *bona fide*. Order 18 Rule 17 CPC can be invoked as per convenience of the Court. If the Court is satisfied that the proposed additional evidence is just and proper for just decision of the case or the same would facilitate the Court to decide the controversy in an effective manner. The said provision cannot be utilized by the party.

[15]. The ratio laid down by Hon'ble Apex Court in **Ratti Ram vs Mange Ram (D) through LRs and others, 2016(2) RCR (Civil) 464** can be relied to say that the aforesaid ratio has

embarked upon the controversy of such type where the Hon'ble Apex Court has ruled that recalling of witness for further elaboration on left out points is wholly impermissible in law. The purpose of provision in terms of Order 18 Rule 17 CPC is very limited and is discretionary in nature and the same can be invoked for the convenience of the Court.

[16]. Prejudice is not a ground for exercise of powers by the Court. Principles are akin to Section 47 CPC where the party makes an application under provision of Order 18 Rule 17 CPC. It is ultimately within the Courts discretion. The principle laid down by the Hon'ble Apex Court in **Vadiraj Nagappa Vemekar vs Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410** is also a proposition on the point which can be relied in the present case.

[17]. In **M/s Shree Sangmeshwar Mahadev Gramo Udyog Mandal vs. Ajmer Singh and another, 2014(4) Law Herald 3627**, this Court held that the additional evidence cannot be allowed to be led by the plaintiff when the evidence was within the knowledge of the plaintiff at the time of leading evidence in affirmative. Additional evidence to contradict the evidence of the defendant cannot be allowed in such circumstances. No such satisfaction could be recorded with regard to the fact that the evidence in question was not within the knowledge of the

plaintiff at the time of leading evidence in affirmative. The discretion under inherent powers of the Court cannot be exercised in the given situation.

[18]. In **Civil Appeal No.1787 of 2013 arising out of SLP(C) No.35268 of 2011** titled '**M/s Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai vs. M/s Gupta Building Material Store** decided on 22.02.2013, it was held by the Hon'ble Apex Court that at the belated stage that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, the plaintiff could not be permitted to file application for additional evidence to fill the lacunae in its pleadings and evidence led by him. There was no acceptable reason or cause which was shown by the plaintiff as to why those documents were not placed on record by the plaintiff during the entire trial.

[19]. The impugned order is conspicuously silent with regard to the explanation for not leading such evidence in affirmative or at rebuttal stage. No explanation has come forth even at the instance of the plaintiffs. The stand taken by the petitioners/defendants No.1 to 3 in the reply to the application for additional evidence appears to be glaring and the trial Court was under obligation to counter the same while passing the impugned order which has not been done.

[20]. At this state, this Court does not wish to comment upon the context of the reply, but in view of the stage of the trial (i.e. for pronouncement after hearing additional arguments on 07.03.2018), the impugned order cannot be held to be validly passed thereby opening the floodgates for the plaintiffs to lead additional evidence. The aforesaid exercise would lead to *de novo* trial and the same is not permissible in view of facts and circumstances of the case.

[21]. For the reasons recorded hereinabove, I deem it appropriate to accept this revision petition. Consequently, the impugned order dated 21.03.2018 passed by the Civil Judge (Jr. Divn.) Gururgam is set aside. Normal consequences to follow.

March 29, 2019

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No