

CR-285-2017 (O&M)

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

CR-285-2017 (O&M)
Date of decision : 18.01.2019

Rajiv

... Petitioner

Versus

Vipin Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.K. Tuteja, Advocate
for the petitioner.

Mr. Dinesh Arora, Advocate
for respondent Nos.1 and 2.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned orders dated 05.10.2016 (Annexure P-11) and 03.12.2016 (Annexure P-15), whereby the request to tender the certified copy of the documents as well as application for additional evidence, have been dismissed.

Learned counsel appearing on behalf of the petitioner submitted that the petitioner had filed the civil suit for permanent injunction, wherein the issues were framed on 11.02.2016. The cross-examination of the petitioners was completed vide order dated 27.09.2016 (Annexure P-10) and the Court below adjourned the matter for tendering the documentary evidence as well as the evidence of the defendants. However, on 05.10.2016, no documentary was tendered and the evidence was closed by order and the matter was listed for defendants' evidence. Having left with no

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other option, moved an application for additional evidence, which has erroneously been dismissed.

Learned counsel for the respondents submitted that the documentary evidence placed on record had a superimposed stamp of 2016, whereas they had already tendered in the year 2014. That aforementioned conduct of the petitioner has been noticed by the Court below, while declining the application. Such conduct of the petitioner cannot go unnoticed, rightly so, has been declined.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Tuteja.

It would be in the fitness of things to reproduce the order dated 27.09.2016 and 05.10.2016, which read as under:-

"Order dated 27.09.2016

PW5 namely Rajiv Kumar is present for his cross-examination. He has tendered documents Ex.PX and Ex.PY in his evidence. His cross-examination has been completed. PW6 namely, Shri Nityanand is present and examined. Therefore, plaintiff Rajiv has stated at bar that he has closed oral evidence in affirmation on behalf of plaintiff and requested some time for documentary evidence. Separate statement of the plaintiff to that effect recorded. Now the case is adjourned to 05.10.2016 for documentary evidence on behalf of the plaintiff as well as evidence of defendant.

Order dated 05.10.2016

No documentary evidence on behalf of the plaintiff is present. Same is closed by court order. No DW is present. Adjournment requested. Head. Allowed. Now the case is adjourned to 10.10.2016 for evidence of the defendants."

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The aforementioned orders reveal that the plaintiff was given a chance to tender evidence without any objection from the defendants, for, on the adjourned date, could not tender and evidence was closed. In my view, the trial Court ought not to have adopted the harsh approach in not allowing the documents to be tendered, particularly prayer for leading the documents by way of additional evidence, was made. The trial Court also remained oblivious of the fact that the tendering of the evidence would always be subject to its mode of proof as per the provisions of law. Whether it would have an effect upon the suit or not or otherwise, would be a question to be determined at the final adjudication of the suit.

Keeping in view the aforementioned facts, the impugned orders, under challenge, are not sustainable in the eyes of law and the same are set aside. The petitioner-plaintiff is granted opportunity to tender the documents, in accordance with law, subject to the payment of costs of ₹5,000/-, which shall be condition precedent.

The present revision petition stands allowed.

18.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**