

CR Nos.3702 & 3837 of 2017 (O&M)

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

Date of decision : 16.01.2019

1. CR-3702-2017 (O&M)

Gayan Chand

... Petitioner

Versus

Tej Pal

... Respondent

2. CR-3837-2017 (O&M)

Gayan Chand

... Petitioner

Versus

Tej Pal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Kaushik, Advocate
for the petitioner in both the cases.

Mr. Amit Kumar Jain, Advocate
for the respondent in both the cases.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two revision petitions at the instance of the plaintiff, one CR No.3702 of 2017 against the impugned order dated 17.04.2017 (Annexure P-1), whereby the application of the defendant for leading additional evidence after closure of the evidence to produce one pen drive with regard to the conversation of the meeting held on 10.10.2016, has been allowed and other CR No.3837 of 2017 against the

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same very order, whereby the application of the plaintiff under Order 38 Rule 5 of CPC for attachment of the property, has been dismissed.

Mr. Naresh Kaushik, learned counsel appearing on behalf of the petitioner submitted that the suit at the instance of the plaintiff is for recovery. The defendants closed their evidence after availing 14 opportunities and thereafter, moved an application for additional evidence for placing on record the pen drive, as indicated above. The aforementioned application was not maintainable in view of the specific provisions prescribed under Section 65(B) of the Indian Evidence.

Since there is an apprehension with regard to parting with the property before passing of the judgment and decree, the provisions of Order 38 Rule 5 of CPC were invoked, which have been declined on the ground of *lis pendens*, but the Court below had not noticed the fact that it would create third party rights and multiplicity of the litigation.

Mr. Amit Kumar Jain, learned counsel appearing on behalf of the defendants supported the impugned orders by submitting that the additional evidence was a subsequent event to one, when the evidence was closed, therefore, it is material for adjudication of the *lis* as there was admission by the plaintiff with regard to the defence of the defendants. The doctrine akin of *lis pendens* is no longer *res integra* and therefore, in case, the defendant parts with the property, the same would be governed by the provisions of Section 52 of the Transfer of Property Act.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduced the provisions of Section 65(B)

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of the Indian Evidence Act, which read as under:-

"65B. Admissibility of electronic records.—

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

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(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or
(b) by different computers operating in succession over that period; or
(c) by different combinations of computers operating in succession over that period; or
(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;
(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a

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responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) *For the purposes of this section,—*

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment."

On perusal of the aforementioned provisions, the application for additional evidence was not maintainable as there is specific procedure prescribed to prove the same. Be that as it may, the trial Court did not notice the aforementioned fact, thus, there is illegality and falsity. The impugned order dated 17.04.2017 is not sustainable in the eyes of law, thus, the same is set aside and the application under Order 151 of CPC for leading additional evidence is dismissed. The revision petition bearing CR No.3702 of 2017 stands allowed.

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As regards CR No.3837 of 2017, the recovery amount is ₹3 Lacs (an odd amount) and it is not a ground for seeking attachment of the property. The impugned order, under challenge, cannot be said to be suffering from any illegality and perversity. The same is upheld and the application under Order 38 Rule 5 of CPC is dismissed. Resultantly, CR No.3837 of 2017 is also dismissed.

16.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**