

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

CR No.4517 of 2016(O&M)  
Date of decision: 22.11.2019

**Darshan Singh**

**.....Petitioner**

**vs.**

**Charanjit Kaur and others**

**.....Respondents**

**CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR**

Present: - Mr. Vivek Gupta, Advocate,  
for the petitioner.

Mr. Gopal Singh Nahel, Advocate,  
for respondent No.1.

.....

**Sanjay Kumar, J.**

The petitioner in this revision, filed under Article 227 of the Constitution, is the first plaintiff in Civil Suit No.36 of 15.12.2010 on the file of the learned Additional Civil Judge (Senior Division), Sunam (hereinafter, 'the trial Court'). He filed this revision aggrieved by the order dated 12.07.2016 passed by the trial Court rejecting his application for adducing additional evidence.

On 21.07.2016, while directing notice of motion returnable on 03.08.2016, this Court ordered the trial Court to adjourn the case beyond the date fixed, viz, 03.08.2016. This interim order was continued thereafter from time to time.

Parties shall hereinafter be referred to as arrayed in the suit.

Civil Suit No.36 of 15.12.2010 was filed for declaratory relief

and a consequential permanent injunction. By order dated 03.10.2015 passed therein, the trial Court closed the evidence of the plaintiffs. Aggrieved thereby, the first plaintiff, the petitioner in this revision, filed CR No.8168 of 2015 before this Court. The said revision was disposed of, vide order dated 03.12.2015, permitting examination of all the three witnesses sought to be produced by the plaintiffs, as per the provisions of Order 16 Rule 1-A CPC, on the date fixed by the trial Court, subject to payment of costs of ₹5,000/-. Pursuant to the aforestated order, the plaintiffs got examined their three witnesses before the trial Court on 22.01.2016. The trial Court recorded as under on 22.01.2016 :

*'(The documents objected to on the ground that the same have been tendered beyond the permission of the Hon'ble Punjab and Haryana High Court in the order dated 03.12.2015 and the evidence of the plaintiffs have already stood closed). (objection is kept opened at the stage of final stage)'*

sd/-  
(Sanjeev Kundi)  
ACJ(SD)/Sunam  
22.01.2016

While so, the plaintiffs moved the subject application on 29.03.2016 seeking to produce certain documents in original and to get them exhibited. According to the plaintiffs, the photostat copies of these documents were already available on file.

Perusal of the subject application reflects that certain revenue records of the years 2005 to 2010, sale deeds of 2007-08, mutation orders of 1979-80 and 1989-90, possession proceedings dated 13.07.1976 and a copy

of the order of this Court in Civil Revision No. 2790 of 1993 were sought to be produced and exhibited on record.

Thereupon, the trial Court noted that the subject suit was more than five years old and was an identified case. Adverting to the fact that the plaintiffs had been granted only one opportunity to lead evidence, vide the order dated 03.12.2015 passed by this Court in CR No. 8168 of 2015, the trial Court noted that they had done so on 22.01.2016, whereupon their evidence stood closed. The trial Court also noted that the subject application was filed when the case was fixed for rebuttal evidence and the plaintiffs had not discharged the burden placed upon them to show that this additional evidence was not within their knowledge earlier. It is on this basis that the trial Court rejected the subject application.

Be it noted that Order 7 Rule 14(1) CPC requires the plaintiff in a suit to produce any document that he wishes to rely upon in Court at the time the plaint is presented by him. A document which ought to have been so produced but was not, cannot be received in evidence on behalf of such plaintiff without the leave of the Court as per Order 7 Rule 14(3) CPC. Order 18 Rule 17-A CPC however permitted a party to produce evidence which was not within its knowledge or could not be produced earlier, subject to the Court being satisfied that despite exercise of due diligence, such party could not have done so while leading evidence. This provision was however omitted from the statute with effect from 01.07.2002, vide Act 46 of 1999.

It may also be noted that the earlier opportunity granted to the

plaintiffs by this Court, vide the order dated 03.12.2015 passed in CR No.8168 of 2015, required them to examine all the three witnesses that they proposed to produce in one go, as per the provisions of Order 16 Rule 1-A CPC. Order 16 Rule 1-A CPC specifically speaks of a party to the suit bringing any witness to give evidence or to produce documents. Therefore, the entire exercise of not only recording oral evidence of such witnesses but also marking documentary evidence through them had to be completed at the same time.

Significantly, the order dated 22.01.2016 passed by the trial Court demonstrates that documents were marked by the three witnesses examined by the plaintiffs on the said date in terms of the liberty granted by this Court. The order also records that the marking of the documents was objected to by the other side and the said objections were kept open for consideration at the stage of final hearing.

It appears that as the defendants in the suit objected to the marking of the documents, the plaintiffs now wish to make good the lacuna by producing the originals of the documents, copies of which were allegedly placed on record. It is not clear as to whether all the documents now sought to be produced in evidence already form part of the record in the form of photocopies, but in any event, if the subject application is allowed, these documents would again have to be marked through competent witnesses. In effect, the plaintiffs would have to be given one more opportunity to examine witnesses on their behalf, despite the fact that this Court granted them only one opportunity to do so as per the order in CR No. 8168 of 2015.

By way of this indirect approach, it was not open to the plaintiffs to seek re-writing of the said order. Further, this Court cannot sit in appeal over or review the said order by exercise of revisionary jurisdiction.

In any event, as the trial Court already marked documents through the three witnesses examined by the plaintiffs on 22.01.2016 and objections thereto would be considered at the time of final hearing of the suit, this Court deems it unnecessary to comment upon the admissibility and relevance of the said documents at this stage.

Though a learned Judge of this Court in ***Jes Raj, Personal Assistant, Punjab State Industrial Development Corporation Ltd., Sector 17-A, Chandigarh. V/s. Punjab State Industrial Development Corporation Ltd. and others [1990(1) PLR 652 : 1990(1) RLR 502]*** observed that additional evidence within the ambit of Order 18 Rule 17-A CPC should be allowed as its provisions are not to be interpreted in a manner which defeats the cause of justice, the said observations, even if they were made in the context of documents which were already brought on record in the case but had not been admitted, have no relevance given the fact that Order 18 Rule 17A CPC is no longer there in the statute book and as the plaintiffs have already availed the single opportunity afforded to them to complete their evidence in terms of the order passed by this Court in the earlier revision.

Similarly, the decisions of this Court in ***Weston Electronics Limited V/s. M/s Chand Radio and others [1988(1) PLR 690 : 1988(1) PLR 345]*** and ***Nihala (deceased) through LRs V/s. Irshad [2017(2)***

***RCR (Civil) 884 : 2017 AIR CC 3073]***, in relation to Order 18 Rule 17-A CPC, have no application to the case on hand for the same reason. So too, the judgments in ***Bhajan Singh & others V/s. Karnail Singh [2010(3) RCR (Civil) 355]*** and ***Nihala (deceased) through LRs V/s. Irshad [2017(2) RCR (Civil) 884]***.

On the above analysis this Court finds that the trial Court was fully justified in denying the plea of the plaintiffs to adduce additional evidence upon closure of their evidence after taking advantage of the last opportunity given to them to do so by this Court in CR No. 8168 of 2015.

The civil revision is therefore without merit and is accordingly dismissed.

Interim order dated 21.07.2016 shall stand vacated.

Pending miscellaneous applications, if any, shall also stand dismissed.

No order as to costs.

**(SANJAY KUMAR)**  
**JUDGE**

22.11.2019

rakesh

whether speaking/non speaking : Yes/no

whether reportable/non reportable : Yes/no