

CR-4684-2017 (O&M)

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

**CR-4684-2017 (O&M)
Date of decision : 15.05.2019**

Pargat Singh

... Petitioner

Versus

Sanjay Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Kumar Aggarwal, Advocate for the petitioner.

Mr. Rajinder Goyal, Advocate for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the respondent-defendant in a suit filed for specific performance of agreement to sell, at the stage of rebuttal and arguments, for re-examination of PW-2, Balwant Singh, being attesting witness of the agreement to sell and examination of an Expert, has been allowed.

Mr. Aggarwal, learned counsel appearing on behalf of the petitioner submitted that the plaintiff had sought the specific performance of agreement to sell and the defendant, in the written statement, denied the execution of the agreement to sell. Both the parties have led extensive evidence. The impugned order, under challenge, is not sustainable as the entire case has been set up, in the absence of any pleadings or any application for amendment of the plaint. The concession given by the Court below is basically, on the premise that DW-2, was confined in the jail, but he was always produced through the order of the Court and cannot be permitted to fill up lacuna under the garb of examination of receipt,

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allegedly executed by PW-2.

Per contra, Mr. Rajinder Goyal, learned counsel appearing on behalf of the respondent submitted that the valuable right has accrued in favour of the defendant as he could not share the knowledge with his counsel owing to his incapacitation. He was not in a fit state of mind. No prejudice and harm would be caused as the plaintiff shall be at liberty to rebut the aforementioned evidence and it would also help the Court for adjudication of the *lis*.

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. Aggarwal, for, the evidence sought to be led is totally alien to the pleadings and it is a settled law that any evidence beyond the pleadings cannot be permitted. If at all, the evidence was so essential, an application could have been moved for amendment. No explanation has come forward in exercising of 'Due Diligence'. It appears to be an attempt to delay the adjudication of the trial. Re-examination of PW2 and examination of Expert, would tantamount to fill up the lacuna, for which, the valuable right has already accrued in favour of the petitioner-plaintiff.

Keeping in view the aforementioned facts, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby upheld. Resultantly, the present revision petition stands allowed.

15.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No