

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

**C.R. No.5213 of 2017 (O&M)
Date of Decision.05.04.2019**

Mool Chand

...Petitioner

Vs

Pawan Kumar and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.R. Yadav, Advocate
for the petitioner.

Mr. J.P. Sharma, Advocate
for respondent No.1.

Mr. Munish Gupta, Advocate
for respondent No.2.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order on behalf of the petitioner-defendant No.2 whereby application of defendant No.1 qua additional evidence has been allowed.

Mr. Yadav, learned counsel for the petitioner submitted that respondent-plaintiff, HPS Institution Pvt. Limited, New Delhi filed the suit for specific performance of agreement to sell against his clients-defendants No.1 and 2. Vide order dated 17.02.2017, defendant No.1 closed the evidence and the matter was listed for evidence of defendant No.2. Defendant No.2 appeared as DW3 and was cross-examined, which is reflected from order dated 04.03.2017. On 27.03.2017 evidence of defendant No.2 was closed and the matter was posted for 11.04.2017 when application (Annexure P-5) was filed by defendant No.1 for giving him permission to produce

additional evidence to recognize thumb impression of Jagmal Singh son of Indraj Singh, deed writer Rama Nand witnesses of the original agreement dated 27.01.2012. There is no rebuttal issue and in the absence of the same, the aforesaid evidence is nothing but an attempt to fill up the lacuna.

Per contra, Mr. J.P. Sharma, learned counsel appearing for respondent No.1 and Mr. Munish Gupta, learned counsel appearing for respondent No.2 submitted that revision petition at the instance of defendant No.2 is not sustainable, as the plaintiff sought specific performance of agreement to sell dated 22.02.2012 entered by defendant No.1 in favour of plaintiff. Defendant No.1 is holder of agreement to sell dated 27.01.2012 executed by defendant No.2. Defendant No.2 in cross-examination denied his signatures and it is in these circumstances occasion arose to examine witnesses aforementioned. Since there was no stay qua final order, witnesses have already been examined and cross-examined, in pursuance to the impugned order.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Yadav. The decision of the suit hinges upon not only agreement to sell dated 22.02.2012 but also on agreement dated 27.01.2012 as defendant No.1 derived interest and power only from agreement to sell dated 27.01.2012. Once defendant No.2, who had allegedly executed aforementioned agreement in favour of defendant No.1, denied the same, examination of witnesses referred to above is *sine qua non* for proper adjudication of the suit. Parties have already

made headway in pursuance to impugned order, thus, in my view, it would not be in the fitness of things to put the clock back by setting aside the order under challenge. The locus standi of defendant No.2 in the absence of any opposition by the plaintiff cannot be said to be bona fide.

In view of such circumstances, I do not find any illegality and infirmity in the order passed by the trial Court. No ground for interference is made out. Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

April 05, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No