YOGESH SHARMA
2019.01.21 12:05
I attest to the accuracy and
integrity of this document

221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5674-2016 (O&M)
Date of decision : 16.01.2019

Inder (deceased) through LR

... Petitioner

Versus

Pardeep Jain and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the petitioner.

None for the respondents.

****

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 19.08.2016 (Annexure P-5), whereby the objection of the petitioner-plaintiff for rejecting the statement of DW-2, Atul Jain, alleged to be authorised representative/person of defendant No.2 i.e. Honey Builders Pvt. Ltd., despite the fact that Hridesh, authorised representative of defendant No.2, has already been examined as DW1, has been dismissed.

This Court on 02.09.2016 while issuing notice of motion passed the following order:-

> *"Counsel for the petitioner inter alia contends that Honey Builders Private Limited is defendant No. 2 in the suit filed by Khem Chand and another. The plaintiffs closed their evidence and the case was pending for evidence of the defendants. Defendant No. 2 examined one Hirdesh, authorised person of M/s Honey Builders Private Limited and he tendered into evidence his affidavit (Annexure P-2) by way of examination in*

YOGESH SHARMA
2019.01.21 12:05
I attest to the accuracy and
integrity of this document

chief. The witness was cross examined by counsel opposite. Later, another person Atul Jain, stated to be authorized person of M/s Honey Builders Private Limited appeared in the witness box and tendered into evidence his affidavit (Annexure P-3) by way of examination in chief but counsel for the petitioner raised an objection in this regard but the court below has dismissed the application by holding that Order 18 Rule 17 of the Code of Civil Procedure would not be attracted in the circumstances.

Notice of motion for 7.11.2016 to respondent No. 2 only.

In the meantime, cross examination of Atul Jain shall remain stayed and remaining evidence may be recorded."

Respondent No.2 has already been proceeded *ex parte* on 17.04.2018.

The impugned order, under challenge, in my view, is not sustainable in the eyes of law, for, defendant No.2 cannot be permitted to fill up the lacuna by tendering the other evidence of same witness, whose affidavit (Annexure P-2) was cross-examined in extensive. It tantamounts to additional evidence without any prayer or leave of the Court. Accordingly, the impugned order is hereby set aside and the present revision petition stands allowed.

16.01.2019 **(AMIT RAWAL)**
Yogesh Sharma **JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**