

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

C.R. No.7736 of 2016 (O&M)
Date of Decision.01.02.2019

Arjanson Traders, Commission Agents, Sirhind Mandi ...Petitioner

Vs

M/s Onkar Traders Sirhind and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Rangi, Advocate
for the petitioner.

Ms. Deepsikha, Advocate for
Mr. Nikhil Chopra, Advocate
for respondents No.2(i) and (ii).

-.-

AMIT RAWAL J. (ORAL)

The short point involved is, whether in case of denial by the defendant qua existence of firm as plaintiff and plaintiff, being alive to the aforementioned fact, can be permitted to move an application for bringing on record additional evidence i.e. documents of 1996 and 2005 for existence of firm in the suit filed in 2008, in the absence of any rebuttal issue, the answer is 'no'.

The plaintiff after cross-examination of the defendant submitted an application in 2016 for bringing on record following documents to establish that the firm was in existence:-

“1. Photocopy of State Bank of Patiala, Branch Sirhind City regarding payment of interest on dated 30.04.2005 to the applicant-plaintiff.

2. Photocopy of record of deduction of 'TDS' on dated 30.04.2005 in State Bank of Patiala, Branch Sirhind

City.

3. Photocopy of record of Central Sales Tax from Assessing Authority, Fatehgarh Sahib pertaining to Onkar Traders of dated 26.09.1996 valid up to 31.10.1996.”

It is not understandable, once the defendant had already denied its existence in the written statement and issues were already framed, as to how and under what circumstances, plaintiff did not lead evidence. Even if these were in possession of the defendant, the plaintiff could have moved an application for production and in the absence of the same, Court could draw adverse inference. Having failed to do so, it is an attempt to fill up the lacuna, which cannot be permitted as valuable right accrued in favour of the defendant.

In view of the aforementioned, I do not find any illegality and infirmity in the impugned order and the same cannot be said to be passed without jurisdiction. The impugned order is upheld and the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

February 01, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No