

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

C.R. No.753 of 2018 (O&M)

Date of Decision.09.04.2019

Surinder Singh Brar (since deceased) through LRs

...Petitioner

Vs

Baljinder Kaur and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. Malkeet Singh Balianwali, Advocate
for respondent No.1.

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AMIT RAWAL J. (ORAL)

Learned counsel for the petitioner submitted that the plaintiff sought specific performance of agreement to sell in respect of sale of shop which was private bearing No.B-26/1 and B-26/2 being part of building built up on khasra numbers referred to in the plaint and had led evidence in respect of the same.

Defendants contested the suit.

Due to inadvertence two documents namely power of attorney executed by the plaintiff in favour of Baldev Singh Brar and banker certificate dated 23.09.2002 could not be produced and exhibited in accordance with law. The aforementioned evidence would not tantamount to rebuttal evidence but only clerical error. The sole reason for dismissal of the application is that provisions of additional evidence have been deleted.

Per contra, learned counsel appearing on behalf of respondent No.1 submitted that plaintiff did not aver in his evidence regarding aforementioned documents and therefore, they will not be important to the

case, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit. Opening line of the suit reveals that it has been filed through attorney Baldev Singh Brar. Since it is specific performance for agreement to sell, readiness and willingness is of wider amplitude, which would include other documents i.e. banker certificate to show that plaintiff had sufficient amount in his account or not. The aforementioned document, in my view, would help the Court for adjudication of the *lis*, subject to the terms and conditions, particularly, the approach of the plaintiff should have been more vigilant instead of lackadaisical. The Court should not adopt technical approach as they are in hand made to justice and cannot be interpreted for miscarriage of justice.

In view of the aforementioned circumstances, the impugned order is set aside. The application for additional evidence is allowed and the petitioner-plaintiff is permitted to prove power of attorney and banker certificate referred to above by seeking one effective opportunity from the trial Court and respondents-defendants would also have one opportunity to rebut the same in accordance with law, subject to payment of costs of ₹7000/- which shall be condition precedent, failing which the order passed by the trial Court shall stand restored.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

April 09, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No