

[116] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.694 of 2019

Date of decision: 31.01.2019

Jitender Kumar.

.... Petitioner

Versus

Shyam Sunder Purohit and others.

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. J.P. Sharma, Advocate for the petitioner.

B.S. WALIA, J.

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to order Annexure P-1 dated 12.09.2018 as well as Annexure P-2 dated 09.01.2019 passed by the learned Additional Civil Judge (Sr. Div.), Narnaul dismissing application Annexure P-3 dated 22.12.2017 for adducing documents in rebuttal evidence as well as application Annexure P-4 dated 09.10.2018 for leading additional evidence .

[2] Learned counsel contended that the petitioner/plaintiff had filed a suit seeking relief of declaration as well as permanent injunction and moved application Annexure P-3 dated 22.12.2017 to tender 46 documents in rebuttal on the ground that burden of proving issue regarding maintainability as well as limitation was on the respondents/defendants and the respondents/ defendants having tendered voluminous evidence in respect thereto, the petitioner/plaintiff in order, to rebut said evidence, wanted to tender the aforementioned documents as the same were necessary for the

proper adjudication of the case but the application was wrongly dismissed by the learned trial court.

[3] The application was opposed by the respondents/defendants on the ground that the petitioner/plaintiff had no right to tender documents in rebuttal as document Nos.1, 2, 3, 10 to 23, 43 and 44 were affirmative in nature while the remaining documents had no concern whatsoever with the subject matter of the suit, therefore, said documents were irrelevant and beyond pleadings. Moreover, the same did not pertain to the issue with regard to maintainability and limitation.

[4] I have considered the submissions of learned counsel for the petitioner. In rebuttal evidence, petitioner/plaintiff can adduce only that evidence which he wants to tender in order to rebut the evidence led by the respondents/defendants. Reference in this context can be made to the decision of a Division Bench of this Court in case titled as **Surjit Singh vs Jagtar Singh, 2007 (1) RCR (C) 537**. Relevant extract of the same is reproduced as under:-

“In our opinion, Order 18 Rule 3 of the CPC would not give a right to the plaintiff to lead evidence in rebuttal on issues in which the onus of proof is on the plaintiff. Accepting such an interpretation would be to ignore a vital part of Order 18 Rule 3 of the CPC. The rule clearly postulates that “the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties”. No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a

statutory provision the Court cannot reconstruct it. We are, therefore, unable to agree with the observations made by the learned singly Judge in the case of Kashmir Kaur (Supra) that he is entitled to lead evidence in rebuttal as a matter of right. We are also unable to agree with the observation of the Learned Single Judge in the case of M/s Punjab Steel Corporation (Supra).”

[5] Documents which the petitioner/plaintiff wanted to tender by way of rebuttal evidence were categorically held by the learned trial Court to be of affirmative nature. It is not the stand of the petitioner/plaintiff that the documents which he wanted to tender by way of rebuttal evidence had wrongly been held to be affirmative in nature by the learned trial Court. Besides, relevance of the documents in question has not been shown by the learned counsel for the petitioner despite repeated query.

[6] Besides, perusal of the application for producing documents by way of rebuttal evidence does not reveal as to how the petitioner/plaintiff intended to disprove the evidence led by the respondents/defendants. Mere mentioning that the documents were necessary for controverting the evidence led by the respondents/defendants on the issue of maintainability as well as limitation without giving the basis as to how he wanted to disprove the evidence led by the respondents/defendants was not enough for allowing the documents to be led in rebuttal evidence. It was essential for the petitioner/plaintiff to prove the nature of the documents as also as to how he was going to rebut the evidence of the respondents/defendants by the documents in question. However, no mention whatsoever was made in the application by the petitioner in respect thereto.

[7] In the circumstances, no grounds whatsoever exist warranting interference with order dated 12.09.2018 dismissing the application for adducing documents by way of rebuttal evidence.

[8] As regards order Annexure P-2 dated 09.01.2019, learned counsel contended that the application for leading additional evidence had been wrongly dismissed despite the documents being essential for deciding the controversy.

[9] I have considered the submissions of learned counsel for the petitioner. The learned trial Court dismissed the application on the ground that the application for additional evidence could be allowed only to prevent miscarriage of justice and to meet the ends of justice and a party could not be allowed to fill up the lacunae under the pretext of an application for leading additional evidence, especially since nowhere in the application it had been stated by the applicant/petitioner as to why he could not produce the documents at the time of his evidence and that the documents which were now sought to be produced were not new documents which were not within the knowledge of the petitioner/plaintiff. The learned trial Court further observed that the petitioner/plaintiff had also not specified as to how the documents sought to be produced by way of additional evidence would meet the ends of justice and prevent the abuse of process of law.

[10] In considering an application for leading additional evidence what is essential is that the application should be bona fide and the additional evidence which is sought to be produced is such as would assist the Court to clarify the evidence on the issues, thereby assist in rendering justice and further that non-production earlier was for valid and sufficient reasons and only then the Court can permit additional evidence to be led.

Supreme Court in **M/s Bagai Construction Thr. its Proprietor Mr. Lalit Bagai vs M/s Gupta Building Material Store, 2013 (14) SCC 1**. Relevant extract of the same is reproduced as under:-

10) In Velusamy (supra) even after considering the principles laid down in Vadiraj Naggappa Vernekar (supra) and taking note of Section 151 Civil Procedure Code, this Court concluded that in the interests of justice and to prevent abuse of the process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

“19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

With these principles, let us consider the merits of the case in hand.

11) *The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order 18 Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of Civil Procedure Code, the plaintiff cannot be permitted.*

12) *After change of various provisions by way of amendment in the Civil Procedure Code, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has*

repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 Civil Procedure Code.”

[11] However, application Annexure P-4 dated 09.10.2018 for leading additional evidence was moved after the application Annexure P-3 dated 22.12.2017 for leading evidence in rebuttal was dismissed on 12.09.2018 by mentioning in the application Annexure P-4 dated 09.10.2018 that the petitioner/plaintiff wanted to produce the same documents which had been refused to be produced by way of rebuttal evidence and said documents were very much necessary and essential to decide the relevant question and controversy between the parties. Apart from taking up the bald plea that the documents were necessary for the adjudication of the controversy, nothing was specified in the application as to how the same

Besides, the documents were to the knowledge of the petitioner/plaintiff since earlier and the petitioners failed to satisfy that non-production of the documents sought to be produced on record by way of additional evidence could not have been produced for valid and sufficient reasons earlier. In the circumstances, I do not find any merit even with regard to the impugned order praying for allowing the application for leading additional evidence.

[12] Accordingly, finding no merit in the revision petition either with regard to the challenge to the order rejecting the application for adducing documents in rebuttal evidence or with regard to the application for leading additional evidence, the revision petition is dismissed in limine.

(B.S. WALIA)
JUDGE

31.01.2019
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No