

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

CR No.685 of 2019

Date of Decision: 18.03.2019

Birmati.

...Petitioner

Versus

Anil Kumar.

....Respondent

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Rajesh Lamba, Advocate for the petitioner.

B.S.Walia, J (Oral)

[1] Civil revision petition has been filed under Article 227 of the Constitution of India, challenging Order dated 17.01.2019 (Annexure P-6), passed by the learned Civil Judge (Junior Division-cum-JMIC), Pataudi, vide which application dated 21.11.2018 (Annexure P-5) filed by the petitioner/defendant under Section 151 CPC for leading additional evidence was dismissed.

[2] Brief facts of the case, leading to the filing of the present revision petition are that the respondent/plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 17.05.2012.

[3] The petitioner-defendant filed a detailed written statement praying for dismissal of the suit *inter alia* on the ground that he had never executed agreement to sell dated 17.05.2012, that the same was a result of fraud and manipulation, played by the respondent-plaintiff on the petitioner-defendant, therefore, the same was not binding on the rights of the petitioner-defendant, that it was absolutely wrong and denied that the petitioner-

defendant had ever received the alleged amount from the respondent-plaintiff as earnest money, that the petitioner-defendant never signed or executed the alleged agreement to sell in favour of the respondent-plaintiff.

[4] On the basis of the pleadings of the parties, issues were framed on 19.10.2015. Issue Nos.1 & 8, which are relevant for the purpose of the present petition are reproduced as under:-

- “1. Whether the plaintiff is entitled to a decree for possession by way of specific performance of contract as prayed for? OPP”
8. Whether the plaintiff has not come to the Court with the clean hands and concealed the true and material facts from the Court? OPD”

[5] Evidence of the respondent-plaintiff was closed on 23.05.2017. Thereafter, the petitioner-defendant was afforded 11 effective opportunities to lead evidence, after which evidence of the defendant was closed on 12.10.2018 on statement of the defendant. Thereafter, an application was moved under Section 151 CPC for leading additional evidence on the ground that although burden of proving execution of agreement to sell and passing of consideration etc. was upon the respondent-plaintiff and the respondent-plaintiff had failed to prove the same by leading cogent evidence, and it was only thereafter that the petitioner-defendant was required to rebut the same, but in order to bring the complete facts in order to prove that the alleged agreement to sell was not executed by the petitioner-defendant and that the signatures on the alleged agreement to sell were not that of the petitioner, the defendant wanted to examine a handwriting expert by way of leading

additional evidence on the ground that on 12.10.2018, counsel for the petitioner-defendant had gone to Guhla Cheeka, Haryana, and the case was attended by junior counsel of petitioner-defendant, as well as petitioner-defendant herself but due to lack of proper communication with the main counsel for the petitioner-defendant, evidence of the petitioner-defendant was closed on the statement of counsel appearing on behalf of the petitioner-defendant and the matter was adjourned to 29.10.2018 for rebuttal evidence and arguments. However, on 29.10.2018 and on 05.11.2018, counsel for the petitioner-defendant could not appear due to illness and the case was got adjourned whereafter the application was moved. The application was opposed by the respondent-plaintiff eventually leading to passing of the impugned order.

[6] Learned counsel for the petitioner-defendant contends that in the light of the circumstances, it would be in the interest of justice that the impugned order be set aside and the petitioner-defendant be allowed to lead additional evidence in order to enable the Court to decide the controversy between the parties effectively by examining a handwriting expert.

[7] I have considered the submissions of learned counsel for the petitioner but am unable to agree with the same.

[8] Admittedly, the evidence of respondent-plaintiff was closed on 23.05.2017 after which the petitioner-defendant was afforded 11 effective opportunities to lead evidence. Thereafter, evidence of the petitioner-defendant was closed on 12.10.2018 on the statement of counsel appearing on behalf of the defendant. The story as put forward that the counsel for the

petitioner-defendant had gone out of station on 23.10.2018 and there was a communication gap, resulting in statement being made by counsel appearing on behalf of the petitioner-defendant on 23.10.2018, closing the evidence on behalf of the petitioner-defendant does not appeal to reason for after the closing of the evidence on behalf of the petitioner-defendant on 12.10.2018 the case was adjourned to 29.10.2018 for rebuttal evidence and arguments. But on said date also, counsel for the petitioner-defendant did not appear and got the case adjourned to 05.11.2018. Again on 05.11.2018 counsel for the petitioner-defendant did not appear, allegedly on the ground that he was unwell. However, no evidence whatsoever of the counsel for the petitioner-defendant having remained unwell on 29.10.2018 and 05.11.2018 was brought to the notice of the Court nor for that matter has been referred to today.

[9] Apart from the aforementioned aspect of the matter, the fact remains that 11 effective opportunities were granted to the petitioner-defendant to lead evidence. Since in the written statement itself, it was the categorical stand of the petitioner-defendant that she had not signed the agreement, therefore, it was incumbent upon the petitioner-defendant to have led evidence by examining handwriting expert at the earliest possible in order to disprove the signature on the agreement not being her's. Not having led the evidence to the above effect despite availing 11 opportunities and thereafter closing the evidence on 12.10.2018, no interference whatsoever is called for with the order passed by the learned trial Court as the petitioner-defendant has failed to explain why the evidence sought to be led by way of additional evidence was not led earlier.

[10] Apart from the fact that no reason has been shown as to why the evidence sought to be led by way of additional evidence was not led at the earliest, despite it being one of the main grounds in the written statement and despite availing 11 effective opportunities, it is relevant to note that the additional evidence is not in respect of a new fact which has subsequently come to the notice of the petitioner-defendant. Thus, the conditions for leading additional evidence are also not fulfilled.

[11] Apart from the aforementioned aspect of the matter, the fact remains that the petitioner-defendant never moved an application for recall or modification of order dated 12.10.2018, closing her evidence by way of statement. Accordingly, finding no merit in the revision petition, the same is ***dismissed in limine.***

(B.S.WALIA)
JUDGE

March 18, 2019
'Rajneesh'

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No