

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

201

**CR No.1156 of 2019 (O&M)
Date of Decision: 17.12.2019**

M/S BHALAI MOTORS AND ANR

.....Petitioners

Versus

M/S B.R. AUTOMOBILE AND ANR.

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.G.S.Sirphikhi, Advocate
for the petitioners.

Mr.A.S.Manaise, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

Petitioners have laid challenged to the order dated 29.1.2019 passed by the Civil Judge (Jr.Divn.), Batala vide which the objections filed by the petitioners in respect of production of documents by the plaintiffs during cross-examination of DW-4 Puneet Ohri were allowed.

Perusal of the record would show that the defendants-petitioners themselves filed an application under Order 11 Rules 12 to 14 read with Section 151 CPC for production of documents by the plaintiffs. The said documents were sought to be produced by the plaintiff on the ground that the plaintiff has taken the plea of payment of various amounts on different dates to the defendant, but the plaintiff had not

produced the original day book and account book in which transaction of payment and receipt of goods from the defendants were mentioned, nor the same were produced by the plaintiff. The plaintiff has alleged the transaction since the year 2003, therefore, the defendant sought to get the account books for the years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 to be produced by the plaintiff which were in possession and control of the plaintiff firm. The application in question was contested by the plaintiff and it was stated that the entire record of the plaintiff firm has already been submitted in the court case file.

The trial court recorded the statement of Bhupinder Singh, Proprietor of the plaintiff to the following effect:-

“I have not maintained any day book pertaining to the account. The original balance sheet for the year 2003 to 2008 was handed over the Sale Tax Department. I have only produced photo copies of the balance sheet attested by me for the year 2003 to 2008. I have not maintained the record of transaction of payment and receiving the goods from the defendant.”

The plaintiff has already concluded his evidence and the evidence of the defendant started and DW-4 Puneet Ohri was recalled for cross-examination. The plaintiff sought to

exhibit the documents, which were objected by learned counsel for the defendant on the ground that the receipts had already been produced by the plaintiff qua confrontation of the witness without any prior intimation to the Court or to the defendant.

Learned counsel for the defendant objected to the confrontation on the receipt to the witness without prior permission and notice to the Court and has also taken objection of late production of the documents as the application in question was filed on 5.7.2013. In the reply to the said application, the plaintiff had taken a specific stand that the entire record of the plaintiff firm has already been submitted in the Court. While passing the order dated 29.1.2019, the Court has rejected the objections raised by the defendants/ petitioners and allowed the production of documents, subject to costs for late production of the same. Issues were framed on 21.4.2011. Recasting of issues was done in the month of January, 2015 and thereafter, additional issues were framed on 9.12.2015.

Since the plaintiff has already concluded his evidence, now in the evidence of the defendant, the plaintiff seeks to fill up the lacuna for which opportunity was granted even by the defendant-petitioner by filing an application under Order 11 Rule 14 CPC on 5.7.2013 to which specific stand was taken by the plaintiff that the documents in question have already been submitted in the court file and even a specific

order was passed by the Court on 15.11.2013 on the statement of Bhupinder Singh, proprietor of the plaintiff.

At this stage, particularly in the evidence of the defendant, the plaintiff cannot seek indulgence of the Court that too without availing opportunity to lead evidence in rebuttal or moving any application for additional evidence.

For the reasons recorded herein above, I deem it appropriate to set aside the impugned order and accept this revision petition.

Accordingly, the present revision petition is allowed. Order dated 29.1.2019 is set aside. Normal consequences to follow.

December 17, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No