

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

CR-1381-2019(O&M)

Date of decision:-18.9.2019

R.S. Dhillon

...Petitioner

Versus

Major Gian Singh Charitable Education Trust and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Santosh Sharma, Advocate
for the petitioner.

Mr.Sunil Chadha, Senior Advocate with
Ms.Swati Verma, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case as per version of the Revisionist are that four civil suits in between the parties were pending before Ms.Saloni Gupta, Civil Judge(Jr.Divn.), Chandigarh. However, on a transfer application filed by Sh.Rajinder Singh Dhillon, learned District Judge, Chandigarh vide his order dated 21.3.2018, in view of the no objection put forward by the opposite counsel coupled with the fact that common question of law and facts are likely to be involved in all the civil suits and decision of the civil suits by different Courts may lead to conflict in decisions, ordered

that all the four civil suits be transferred to the Court of Sh.Jagmeet Singh, Civil Judge(Jr.Divn.), Chandigarh for disposal in accordance with law; that the civil suits were then transferred to the said Court; Civil Suit No.9767 of 2013 titled as 'Major Gian Singh Trust Versus R.S. Dhillon & E.O.' as well as Civil Suit No.2194 of 2013 titled as 'Rajinder Singh Dhillon Versus Major Gian Singh Charitable Trust' were consolidated vide order dated 27.7.2018, however earlier to the consolidation of those two civil suits the parties had adduced evidence; that Major Gian Singh – plaintiff had moved an application under Section 65 of the Indian Evidence Act for placing on record a photocopy of Will dated 10.1.1984 of Major Gian Singh obtained from the office of Deputy Registrar, U.T. Chandigarh and it was so placed on the record of the case 'Major Gian Singh Charitable Education Trust Versus R.S. Dhillon' by way of additional evidence in Civil Suit No.9392 of 2013; that Civil Judge(Jr.Divn.), Chandigarh passed a detailed order dated 6.10.2016 dismissing the application; that plaintiff Major Gian Singh during trial had filed different applications with regard to admissibility of secondary evidence; the application dated 16.12.2014 was disposed of by the trial Court on 19.2.2015, thereafter application dated 2.8.2016 was dismissed vide order dated 6.10.2016; the application dated 21.10.2016 was decided vide order dated 22.12.2016; that Major Gian Singh plaintiff had also filed a similar application for secondary evidence in Civil Suit

No.9767 of 2013; the said application was disposed of by the trial Court vide order dated 6.2.2015; that after consolidation of the civil Suits, an application dated 14.9.2018 under Section 151 CPC for taking on file order dated 6.10.2016 passed by the Court of Civil Judge (Jr.Divn.), Chandigarh was moved, which was wrongly dismissed by the trial Court vide order 31.10.2018; that in civil Suit No.2194 of 2013 titled 'Rajinder Singh Dhillon Versus Major Gian Singh', an application dated 1.9.2018 under Order XIX Rule 4 read with Section 151 CPC for the adjudication of the matter of leading secondary evidence by the defendants/non-applicants was filed by Rajinder Singh Dhillon- plaintiff; the trial Court wrongly and illegally vide order dated 31.10.2018 disposed of the application with the observations that issue regarding secondary evidence would be adjudicated while deciding the case. A review application was filed, which was dismissed vide order dated 30/31.1.2019.

The revisionist felt aggrieved by the orders dated 31.10.2018 and order dated 30/31.1.2019 and he has filed the present revision petition praying that those be set aside.

Notice of the revision petition was given to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Section 115 CPC deals with revision. It provides that the

High Court may call for the record of an case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

In that way, the revisional jurisdiction of this Court is quite limited. In light of this provision, if the orders under challenge are perused then no reason is found to interfere with such orders.

Coming to the impugned order dated 31.10.2018. The defendant Rajinder Singh Dhillon had moved an application under Order XIX Rule 4 CPC read with Section 151 CPC submitting that issue regarding secondary evidence of plaintiff be decided since in the similar case between the parties, application filed by plaintiffs for secondary evidence under Section 65 of the Indian Evidence Act was declined by the Court and for the same reason no grounds were there in the case in hand for the plaintiffs to seek similar permission from the Court. That application was resisted by the plaintiff stating that it was just a delaying tactic and the case had reached stage of final arguments and further order passed in other case had no bearing since the same was with regard to additional evidence. The trial

Court had noticed that the order passed in consolidated suit wherein it had been observed that counsel for the plaintiff had stated that it would save time of the Court if issue qua leading of secondary evidence was dealt with at the time of final adjudication and admissibility of evidence which was on the record be considered at final stage. The request was not objected, as such it had been directed that the admissibility of secondary evidence, which is already on record would be adjudicated at the time of final decision. Then the parties have adduced evidence and the case was fixed for final arguments. The trial Court had rightly observed that issue regarding secondary evidence could be adjudicated while deciding the case. It is difficult to understand as to why the present revisionist is feeling aggrieved by this order. The objection, if any, with regard to admissibility of evidence can be taken at the time of final arguments, which can be disposed of by the Court and the defendant has no right to insist that issue regarding secondary evidence of plaintiff be decided first, rather it points out that its nothing but a dilatory tactic. The case is already mature for arguments and can be disposed of after the counsel for the parties address arguments. Therefore, the trial Court was fully justified in not acceding to such request of defendant Rajinder Singh Dhillon made vide application under Order XIX Rule 4 CPC. Incidentally, Order XIX Rule 4 CPC provides that the Court may by directions regulate the directions as to the issue on

which it requires evidence and the manner in which such evidence may be placed before the Court. Sub Rule 2 provides that the Court may in its discretion and for the reasons to be recorded in writing exclude evidence that would otherwise be produced by the parties. In that way, the discretion to control evidence completely vests in the Court and a litigant cannot insist that such discretion be exercised in a particular manner. Further, Order XIX Rule 4 CPC was inserted vide special amendment in respect to suits relating to commercial disputes and as it comes out the dispute between the parties is certainly not of that nature. The application was misconceived and was rightly not accepted by the trial Court.

Now coming to the other order impugned in the revision petition. Vide this order application seeking review of order dated 31.10.2018 had been dismissed observing that there was no mistake or error apparent on the face of the record requiring review of the order and the application appeared to be misuse of process of law apparently filed to delay the proceedings of the case, which had come to the fag end of arguments. Both the parties were directed to address final arguments on 14.2.2019.

There is nothing wrong with the order. Both the orders passed by the trial Court are detailed and well reasoned, which do not suffer from any illegality or infirmity much less apparent on the face of such orders. The orders are certainly not arbitrary or perverse.

Therefore, no interference by this Court while exercising revisional jurisdiction is called for.

Finding no merit in the revision petition, the same stands dismissed.

Since it has been observed by the trial Court and that too rightly, that the applications were being filed just to prolong the proceedings, the trial Court is directed to hear the arguments and dispose of the case expeditiously declining the request for adjournment for the purpose unless any strong justifiable reason is there for the same.

18.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No