

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

RSA No.1572 of 2019 (O&M)

Date of Decision : 08.07.2019

Jeet Singh alias Ajeet Singh (since deceased) through LRs
.....Appellants

Versus

M/s Gurcharan Singh & Co. Commission Agents through its Partners
.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Arvind Kashyap, Advocate
for the Appellants.

Mr. Charanpal Singh, Advocate and
Mr. G.K. Bagri, Advocate
for the Caveator/Respondent.

SUDIP AHLUWALIA, J. (ORAL)

As already noted in the earlier Order dated 8th May, 2019, four Applications were filed on behalf of the appellant/defendant in the Ld. Trial Court on 22.04.2014 (Annexure A-1), 26.05.2014 (Annexure A-3), 07.07.2014 (Annexure A-5) and 23.07.2014 (Annexure A-7), and replies against each of these Applications were filed on behalf of the Respondent/Plaintiff vide Annexures A-2, A-4, A-6 and A-8, respectively.

2. From LCR of the Ld. Trial Court, it now transpires that on 30.09.2014, the Applications dated 22.04.2014 and 07.07.2014 (Annexure A-1 and A-5) were dismissed as withdrawn. Consequently,

what remained pending were the Applications dated 26.05.2014 (Annexure A-3) and 23.07.2014 (Annexure A-7). On 13.10.2014, the Application dated 23.07.2014 for permission to lead additional evidence in order to prove the original Receipt dated 11.09.2014 was allowed by the Ld. Trial Court, subject to payment of costs. Thereafter, on the adjourned date (05.11.2014) DW-3 namely Harjinder Kaur was Examined-in-Chief and her cross-examination was then completed on 12.11.2014, after which the matter was posted for rebuttal evidence, if any, and arguments. However, the Plaintiff's side failed to lead any rebuttal evidence after having obtained several opportunities for that purpose, on account of which, on 09.02.2016, the Court closed the same and heard arguments in the main Suit, after which the Suit was decreed with costs.

3. Grievance of the Appellants' at this stage is that their Application dated 26.05.2014 (Annexure A-3) remained undecided, in which they had prayed for calling upon the Plaintiff to admit or deny the Receipt dated 11.09.2004 (Annexure A-9), which was intended to be led into additional evidence.

4. In the opinion of this Court, the above grievance is unfounded. According to Order XII Rule 2 of the Civil Procedure Code, 1908, either party in a Suit is required to call upon the other party to admit or deny any document relied upon by it within seven

days from the date of service of notice in the Suit, but in this case, the prayer to that effect was made after an inordinately long period exceeding eight years from the date of filing of the Suit, and the Defendant had actually put in appearance after service on 03.05.2006. Nevertheless, vide the Order dated 13.10.2014, the Defendant was still granted an opportunity for proving the original disputed Receipt, which incidentally was not brought on record at any earlier stage in the Suit filed more than eight years earlier on 21.02.2006, nor any reference to the same was made in the pleadings/Written Statement at any stage.

5. As such, there was no scope to call upon the Plaintiff's side to admit or deny the said document at such a belated stage when it was itself beyond the pleadings of the Defendant, and was sought to be brought on record after an inordinate long period of eight and a half years. Even in such a situation, the Ld. Trial Court permitted the Appellant/Defendant to lead additional evidence for proving the said document through its next witness i.e. Harjinder Kaur, but that was not done by the Defendant's side.

6. In these circumstances, the Appellant cannot be granted any more indulgence after lapse of another long period of five years following disposal of the Suit. This grievance was not raised on behalf of the Defendant even before the Ld. Lower Appellate Court nor there appears to have been any attempt to have sought any relief *vis-a-vis* the

Application dated 26.05.2014 even from the Appellate Court.

7. On merits, all the factual controversies involved have been decided in favour of the Respondent/Plaintiff by the concurrent Judgments of both the Ld. Courts below. There is no visible perversity or manifest impropriety in these decisions.

8. Consequently, this Court finds no substantive merit in the present Appeal, which is therefore dismissed.

July 08, 2019

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No