

**CR-8823-2018 (O&M)**

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

**CR-8823-2018 (O&M)**

**Date of decision : 20.03.2019**

Vinod Mohinder

... Petitioner

Versus

R.K. Rice Mill and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

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

Mr. Bhupinder Ghai, Advocate  
for respondent Nos.3 and 4.

Mr. Vivek Suri, Advocate  
for respondent No.10.

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**AMIT RAWAL, J. (ORAL)**

Learned counsel for the petitioner submitted that for the adjudication of the present revision petition, service upon respondent Nos.11 and 12 is not necessary and the same may be dispensed with.

Ordered accordingly.

The present revision petition is directed against the impugned order, whereby an application of the petitioner for leading additional evidence to prove the site plan, at the final stage of the suit seeking registration and execution of the sale deed, in pursuance to the agreement to sell dated 09.09.1995, has been dismissed.

Mr. Arvind Kashyap, learned counsel appearing on behalf of the petitioner submitted that the petitioner had examined all the witnesses

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required in law and also relied upon the site plan, which was prepared by Mr. A.L. Verma, Draftsman, in the District Courts at Fatehgarh Sahib. He was suffering from kidney disease, therefore, could not appear in the witness box and by that time, evidence of the plaintiff was closed vide order dated 19.08.2016. Since the aforementioned site plan remained unproved, he got prepared it from the different draftsman and submitted an application, which has been declined simply on the ground that it was delaying tactics as the plaintiff was not found to be diligent, thus, prays for one more opportunity to prove the site plan, subject to any terms and conditions, which this Court may deem fit appropriate.

Mr. Bhupinder Ghai and Mr. Vivek Suri, learned counsel appearing on behalf of respondent Nos.3 & 4 and 10, respectively, submitted that the impugned order does not suffer from illegality and perversity. The plaintiff had availed 15 (fifteen) opportunities and had the knowledge of ailment of Mr. Verma, though no medical record has been placed in support of the same. A person, in such circumstances, cannot be permitted to fill up the lacuna, who lost his rights, much less, there is no issue of rebuttal, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Kashyap, for the simple reason that the impugned order do not specify any denial of ailment of Mr. A.L. Verma. Be that as it may, the Courts below should not adopt the hypertechnical approach in denying such relief as sought, which is beyond the control of the petitioner-plaintiff and it should have been subject to imposition of some costs.

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Keeping in view the aforementioned facts, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside. The application for leading additional evidence is allowed. The petitioner is permitted to prove the site plan through the Draftsman, in accordance with law, subject to the right of cross-examination and any rebuttal evidence, on behalf of the respondents-defendant.

The present revision petition stands allowed, subject to the costs of ₹7,000/- to be paid to defendant Nos.3 & 4 and 10.

**20.03.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned    **Yes/ No**

Whether Reportable            **Yes/ No**