

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

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CR No.3029 of 2021 (O&M)
DATE OF DECISION : 30th NOVEMBER, 2021

M/s Punjab Feed Mills

.... Petitioner

Versus

Balbi Singh Poultry Farm

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India for quashing of impugned order dated 18.10.2021 (Annexure P-1) passed by the Civil Judge (Junior Division), Khanna, whereby the application of the defendant/respondent for leading additional evidence has been allowed.

The facts of the case, as on record, are that the present petitioner has filed a suit for recovery of Rs.4,50,839/- on account of having supplied certain goods to the defendant-respondent. On the same count, one cheque was stated to have been issued by the defendant. The said cheque, allegedly, defaulted in its payment. Therefore, the petitioner had preferred a criminal complaint under Section 138 of Negotiable Instruments Act, 1881, against the defendant. In those proceedings, the petitioner had led in evidence certain bills qua supply of the goods to the defendant; qua which the present suit for recovery has been filed. The

petitioner had also made a statement as a witness in that criminal complaint. However, that criminal complaint was ultimately dismissed. It is the bills, which were placed on record in that criminal complaint by the petitioner himself, which have been sought to be produced by the defendant in the present suit by way of additional evidence. Beside this, the statement made by the petitioner in the criminal complaint has also been sought to be placed on record by way of additional evidence. The trial Court has allowed the application for additional evidence on both the counts. Accordingly, the copies of the bills, as well as, the certified copy of the statement made by the petitioner in the criminal complaint have been permitted to be led in evidence by the impugned order. Against that order, the present petition has been filed.

Arguing the case on behalf of the petitioner, the counsel for the petitioner has submitted that at the time of leading evidence of the plaintiff-petitioner, in the first instance, the defendant had already cross-examined the petitioner qua the aspects of the bills, which were placed on record in the criminal complaint. It was for him to lead those bills in evidence at that time. However, this step was not taken by the defendant at that time. Hence, the respondent as a defendant, cannot be now permitted to fill up the lacuna in the evidence led by him. It is further submitted by the counsel for the petitioner that the defendant had closed his evidence way back on 31.01.2020. Hence, the present application has been moved after about one and a half years. Hence, the intention of the defendant is only to delay the proceedings. Accordingly, it is submitted that the impugned order be set aside and the permission to the defendant to lead additional evidence be ordered to be denied.

Having heard the counsel for the petitioner and having perused the case file, this Court does not find any illegality or impropriety with the order passed by the Court below. It is not even disputed that the bills, which have now been sought to be placed on record by the defendant, are the bills placed on record in the criminal case by none other than the present petitioner. The claim in the present suit is based upon the said bills only; because these bills are stated to have been raised for the supply of goods; for which the payments are outstanding; and for which the suit for recovery has been filed by him. The petitioner has placed on record by way of evidence in the present suit the bills, statedly, raised by him upon the defendant. The defendant now wants to controvert the bills led in evidence by plaintiff; by placing on record a different version of the same bills, as were led in evidence by the present petitioner in the criminal complaint. Hence, the documents sought to be placed on record by way of additional evidence becomes directly relevant to decide upon the controversy. Hence, it is not a filling of lacuna on the part of defendant, rather, he is trying to rebut the evidence of the petitioner by showing the plaintiff/petitioner his own bills with a different version and which were already led in evidence in criminal complaint by the petitioner himself. Moreover, the concept against filling-up of lacuna in evidence is totally alien to the civil procedure. The concept of additional evidence under CPC does not envisage any bar on additional evidence on account of filling of any lacuna by either of the parties. The permission or denial of the additional evidence has to be based on the necessity of the alleged evidence for the purpose of decision of the suit or, at the best, upon due diligence of the

party in leading the evidence. Of course, there is a delay in seeking permission to lead the additional evidence in the present case, however, the fact remains that there has been an unfortunate COVID-19 pandemic situation in the meantime. Moreover, the petitioner already stands cross-examined qua the aspect of those bills. Hence, the defendant is not even introducing any new version of the matter by seeking to lead the additional evidence as prayed by him.

In view of the above, finding no merit in the present petition, the same is dismissed. The order passed by the trial Court is upheld.

30th NOVEMBER, 2021
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>