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

**CR-1391-2017 (O&M)
Date of decision : 29.03.2022**

Balwant Singh Randhawa & Another

.....Petitioners

versus

Brij Bhushan Bansal & Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. B. S. Khehar, Advocate for the petitioners.

Mr. Puneet Sharma, Advocate for respondent Nos.1 & 2.

ALKA SARIN, J.

Heard in physical mode.

The present petition has been filed under Article 227 of the Constitution of India challenging order dated 27.01.2017 passed by the Trial Court whereby it adjourned the case for consideration on the application moved by the plaintiff-respondent Nos.1 and 2 for production of documents and did not close their evidence.

Brief facts relevant to the present *lis* are that in August 2010 the plaintiff-respondent Nos.1 and 2 filed a suit under Section 92 of the Code of Civil Procedure, 1908 for removal of the defendant Nos.1 and 2-petitioners as Secretary and Vice Chairman of the Trust namely the Desh Bhagat College (Regd.) Bardwal, Dhuri, District Sangrur. The said suit was also for rendition of accounts and for permanent injunction. The defendant

Nos.1 and 2-petitioners are contesting the suit.

On 05.03.2013, when the suit was fixed for evidence of the plaintiff-respondent Nos.1 and 2 and it was a last opportunity, an application (Annexure P-1) was filed by them for directing defendant Nos.1 and 2-petitioners and defendant-respondent No.5 to produce the account books of all the institutions run by Desh Bhagat College Trust since 01.04.1990 till date and also to produce the resolution and constitution. This application was contested by the defendant Nos.1 and 2-petitioners. Vide order dated 10.05.2013 (Annexure P-3) the Trial Court closed the evidence of the plaintiff-respondent Nos.1 and 2 holding inter-alia *“Hence, finding no justification and keeping in view the fact that number of opportunities have already been availed by the plaintiffs in contradiction to the provisions of Order 16 Rule 1 CPC and Order 17 Rule 1 CPC, I do not find any ground to adjourn the case again for the same purpose. Hence, evidence of the plaintiffs is closed by order”*.

The plaintiff-respondent Nos.1 and 2 challenged the order dated 10.05.2013 (Annexure P-3) passed by the Trial Court by filing CR No.3601 of 2013. Vide order dated 28.01.2016 (Annexure P-4) this Court allowed CR No.3601 of 2013 and set aside the order dated 10.05.2013 (Annexure P-3) passed by the Trial Court.

It is averred that the defendant Nos.1 and 2-petitioners filed SLP No.18605 of 2016 against the order dated 28.01.2016 (Annexure P-4) passed by this Court. Vide order dated 16.01.2017 (Annexure P-5) the Supreme Court disposed off the SLP holding as under :

“We are not inclined to interfere with the order passed by the High Court. However, at the same time,

we find that the respondents have taken enough opportunities for leading the evidence. In these circumstances, the respondents are afforded one more opportunity for this purpose and the evidence shall be led on the next date which is fixed by the Trial Court failing which the evidence shall stand closed.

The special leave petition is disposed of in these terms.”

The suit before the Trial Court came up for hearing on 27.01.2017 when the impugned order was passed adjourning the case for consideration on the application for production of documents moved by the plaintiff-respondent Nos.1 and 2.

Learned counsel for the defendant Nos.1 and 2-petitioners has contended that the impugned order has been passed in complete violation of the order passed by the Supreme Court. According to counsel, on 27.01.2017 the plaintiff-respondent Nos.1 and 2 ought to have produced their evidence and since they did not, their evidence ought to have been closed by the Trial Court. Instead the Trial Court adjourned the matter for consideration on the application for production of documents moved by the plaintiff-respondent Nos.1 and 2 which negated the order passed by the Supreme Court.

Per contra, counsel for the plaintiff-respondent Nos.1 and 2 submitted that there was no error in the impugned order passed by the Trial Court. He argued that the Supreme Court did not set aside the order (Annexure P-4) passed by this Court and the Trial Court proceeded in accordance thereof.

I have heard learned counsel for the parties and perused the

paperbook.

This Court while allowing CR. No.3601 of 2013 vide order dated 28.01.2016 (Annexure P-4) had held inter-alia that “*Considering the fact that the suit is for reliefs under Section 92 CPC, I deem it appropriate to order reopening of the case to allow the plaintiff to bring his witnesses and will also afford to the plaintiff opportunity to set out specific nature of documents which are necessary that should have a bearing on the issues involved in the suit. If any such request is made, the Court will examine the relevance and the scope for production after hearing the objections from the respondents*”. No time frame was fixed by this Court for the plaintiff-respondent Nos.1 and 2 to bring their witnesses or to set out the specific documents which are necessary and having a bearing on the issues involved in the suit. However, the Supreme Court vide it’s order dated 16.01.2017 (Annexure P-5) gave a time frame for the plaintiff-respondent Nos.1 and 2 to produce their evidence and also made it time-bound i.e. “*the respondents are afforded one more opportunity for this purpose and the evidence shall be led on the next date which is fixed by the Trial Court*”. The Supreme Court in it’s order further also held that “*failing which the evidence shall stand closed*”.

The next date before the Trial Court after the passing of the order by the Supreme Court was 27.01.2017. On that date i.e. 27.01.2017 the plaintiff-respondent Nos.1 and 2 did not lead their evidence nor did they set out the specific documents which are necessary and having a bearing on the issues involved in the suit. Having failed to lead their evidence on 27.01.2017, the further directions given by the Supreme Court on 16.01.2017 viz. “*the evidence shall stand closed*” ought to have followed.

Instead, the Trial Court adjourned the case for consideration on the application for production of documents moved by the plaintiff-respondent Nos.1 and 2. The order dated 16.01.2017 (Annexure P-5) passed by the Supreme Court is clear and specific with no scope for ambiguity. If the plaintiff-respondent Nos.1 and 2 did not lead their evidence on the next date i.e. 27.01.2017, their evidence stood closed.

The Trial Court clearly acted beyond its jurisdiction while adjourning the suit on 27.01.2017 for consideration on the application for production of documents moved by the plaintiff-respondent Nos.1 and 2. In the face of the specific order by the Supreme Court, the Trial Court was not justified in adjourning the suit on 27.01.2017 for consideration on the application for production of documents moved by the plaintiff-respondent Nos.1 and 2 especially when no fresh application was moved by them after the passing of the order dated 16.01.2017 (Annexure P-5) by the Supreme Court. The only such application before the Trial Court was the one filed by the plaintiff-respondent Nos.1 and 2 on 05.03.2013 (Annexure P-1) on which orders already stood passed by the Trial Court on 10.05.2013 (Annexure P-3), by this Court on 28.01.2016 (Annexure P-4) and by the Supreme Court on 16.01.2017 (Annexure P-5). Further, no reasons are forthcoming from the impugned order as to why the Trial Court did not close the evidence of the plaintiff-respondent Nos.1 and 2 on 27.01.2017 even after the order dated 16.01.2017 passed by the Supreme Court is noticed by it and also noticed that no evidence had been led in pursuance to the directions given by the Supreme Court. The impugned order clearly is an attempt to over-reach the specific order passed by the Supreme Court and cannot be sustained.

In view of the discussion above, the present revision petition is allowed. The evidence of the plaintiff-respondent Nos.1 and 2 stands closed in view of the order dated 16.01.2017 (Annexure P-5) passed by the Supreme Court. Parties, through their counsel, to appear before the Trial Court on the date already fixed i.e. 31.03.2022 for further proceedings in the suit. Since the suit is pending since 2010, the Trial Court is requested to endeavour and conclude the trial within the next nine months.

29.03.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No