

CR-2138-2017 (O&M)

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

CR-2138-2017 (O&M)

Reserved on: 30.11.2022

Pronounced on : December 05, 2022

Jaswinder Singh

...Petitioner

Versus

Sonia Dhillon and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Mohd. Yousaf, Advocate for the petitioner.

Mr. Promila Nain and Mr. Amit Thakur, Advocates
for respondent Nos.1 and 2.

DEEPAK GUPTA, J.

Petitioner is one of the plaintiffs before the Trial Court and is aggrieved by the order dated 18.02.2017 passed by learned Trial Court, whereby his application for summoning a witness in rebuttal or in the alternative to lead additional evidence, has been disallowed.

2. According to the petitioner, he along with proforma respondent filed a suit for declaration to the effect that they are owners in possession of a building known as M/s Goodwill Motels Complex and also sought decree of permanent injunction to restrain the contesting respondents/defendants from interfering in their peaceful possession. During pendency of the suit, respondent Nos.1 and 2 with the help of respondent Nos.3 to 6 and others dispossessed petitioner and proforma respondent from a portion of the suit property on the second floor. Application for amendment of the plaint to include the relief of

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mandatory injunction so as to direct respondent Nos.1 and 2 to hand over the possession of that portion, was allowed on 30.08.2014. After taking written statement of the respondents, evidence of the petitioner was closed in affirmative on 23.09.2015.

3. It is submitted that petitioner is residing abroad. He had appointed Jagjit Singh as his attorney to look after his property and pursue the case. However, said Jagjit Singh did not perform his duty properly. Said Jagjit Singh had lodged a DDR on 13.03.2005 against respondent No.1. The authority of the Corporation had also prepared a report dated 20.03.2005 showing respondent No.1 making unauthorized construction. These facts were not disclosed to the petitioner by said Jagjit Singh. It is during the evidence of defendants-respondents that petitioner came to know about the said DDR and the report prepared by Municipal Authority and put those documents to respondent No.1 during her cross-examination but she denied the same and evidence of the defendants was then closed on 13.12.2016. Petitioner submits that the DDR dated 13.03.2005 and the report dated 20.03.2005 clearly show that respondents had taken forcible possession in March, 2005 itself and thus, these are very material documents, which could not be produced as the same were not brought to his knowledge by his earlier attorney Jagjit Singh. Learned Trial Court without appreciating these facts, dismissed the application for permitting the petitioner to prove those documents in rebuttal evidence or produce the additional evidence in this regard by way of impugned order.

4. Learned counsel for the respondents has defended the

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impugned order by submitting that the petitioner was very much in the knowledge of the documents in question since beginning; that the onus to prove the issue regarding alleged invasion was on the plaintiff-petitioner, who had already closed his affirmative evidence and so, petitioner cannot be now allowed to produce the proposed additional evidence.

5. Heard.

6. Having considered submissions of the both sides, I am of the view that revision deserves to succeed. It is the specific case of the plaintiff-petitioner that during pendency of the suit, he along with proforma respondent were dispossessed from a portion of the suit property, regarding which Jagjit Singh, the attorney of the petitioner through whom the suit was filed, had lodged a DDR and Municipal Authority had also prepared a report in this regard. Thus, documents in question are quite material to resolve the controversy. It is the case of the petitioner that as his attorney had not disclosed him about these documents, so he was not in the knowledge of the same at the time of leading his affirmative evidence and as these documents came to his knowledge during the evidence of defendants, so the same were put to defendant No.1 in her cross-examination but she denied the same. The procedure is handmaid of justice. Only for the technical reasons, plaintiff-petitioner cannot be deprived of his right to place on record the material evidence, which is likely to help the Court in resolving the controversy.

7. As such, this revision is accepted. The impugned order dated 18.02.2017 is set aside. The Trial Court is directed to provide

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opportunity to the petitioner-plaintiff to prove the documents in question in additional evidence. It is made clear that the evidentiary value of the documents proposed to be adduced/proved in additional evidence, shall be considered by the Trial Court at appropriate stage. Besides, the respondents will get opportunity to produce the evidence in rebuttal to the additional evidence.

December 05, 2022

sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No