

256

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

CR-7507-2018 (O&M)

Date of decision : 18.08.2022

Pala Ram

....Petitioner

Versus

Sub Divisional Officer and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Bikam Chaudhary, Advocate for the petitioner.

Mr. B.S. Jaswal, Advocate for the respondents.

ALKA SARIN, J. (Oral)

The present civil revision petition has been filed under Article 227 of the Constitution of India to challenge the order dated 27.09.2018 (Annexure P-4) dismissing the application filed by the petitioner under Order 41 Rule 27 CPC for leading additional evidence.

Learned counsel for the petitioner would contend that the stage of consideration of an application filed under Order 41 Rule 27 CPC is at the time of hearing the appeal on merits so as to find out whether the documents or the evidence sought to be adduced have any relevance. In support of his argument, learned counsel has relied upon the judgment of the Supreme Court passed in **Union of India Vs. Ibrahim Uddin & Anr. [2012 (4) RCR (Civil) 727]**.

Per contra, learned counsel for the respondents has contended that the petitioner had numerous opportunities to file the application for additional evidence, however, the same has been filed only during the

pendency of the appeal. It is further the contention that even when the appeal was filed no application for additional evidence was filed though all documents were within the knowledge of the petitioner.

Heard.

In the present case the issue involved is that the petitioner initially filed a suit for permanent injunction against the Municipal Committee, Cheeka. In the proceedings arising out of the said suit, in Civil Revision No.6953 of 2016 before this Court, a local commissioner was appointed to ascertain the possession of the petitioner over the suit property. The local commissioner gave a report that the petitioner was in possession of the suit property. The said suit eventually came to be decreed in favour of the petitioner on 26.04.2019. Meanwhile, the petitioner was served a notice for disconnection of the electricity tubewell connection and hence filed the present suit for permanent injunction. The present said suit came to be dismissed by the Trial Court on 16.07.2018. An appeal was preferred by the petitioner and during the pendency of the appeal an application for additional evidence was filed under Order 41 Rule 27 CPC for bringing on record the report of a local commissioner; a certified copy of the order dated 19.10.2016 passed by this Court in Civil Revision No.6953 of 2016; certified copy of report of Local Commissioner dated 22.12.2016 appointed by this Court in Civil Revision No.6953 of 2016; uncertified copies of notice, memo of presence of parties and photographs taken by aforesaid Local Commissioner; two original receipts of bills of electricity consumption; certified copy of khasra girdawari for the year 2017-18; original photographs (seven in number) showing the latest position of the suit land and electric connection in question; certified copy of plaint of suit

filed by petitioner against the MC Cheeka; certified copies of jamabandi for the year 1975-76, 1980-81, 1985-86, 1990-91, 1995-96, 2000-01, 2005-06, 2010-11, 2015-16. The said application was contested by the respondents. Vide the impugned order dated 27.09.2018 the said application was dismissed primarily on the ground that it had been moved at a belated stage.

In the case of **Ibrahim Uddin** (*supra*) it has been laid down by the Supreme Court as under :

“Stage of Consideration :

38. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect

becomes apparent to the Court. (Vide: Arjan Singh v. Kartar Singh & Ors., AIR 1951 SC 193; and Natha Singh & Ors. v. The Financial Commissioner, Taxation, Punjab & Ors., AIR 1976 SC 1053).

39. In Parsotim Thakur & Ors. v. Lal Mohar Thakur & Ors., AIR 1931 PC 143, it was held :

“The provisions of S.107 as elucidated by O.41, R.27 are clearly not intended to allow a litigant who has been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omissions in the Court of appeal. Under R.27, Cl.(1) (b) it is only where the appellate Court “requires” it (i.e. finds it needful). The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but “when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent”, it may well be that the defect may be pointed out by a party, or that a party may move the Court to apply the defect, but the requirement must be the requirement of the court upon its appreciation of evidence as it stands. Wherever the Court adopts this procedure it is bound by R. 27(2) to record its reasons for so doing, and under R.29 must specify the points to which the evidence is to be confined

and record on its proceedings the points so specified. The power so conferred upon the Court by the Code ought to be very sparingly exercised and one requirement at least of any new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case...” (Emphasis added)

(See also: Indirajit Pratab Sahi v. Amar Singh, AIR 1928 P.C. 128)

40. *In Arjan Singh v. Kartar Singh & Ors. (supra), this Court held :*

“.....If the additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, it would be a case of improper exercise of discretion, and the additional evidence so brought on the record will have to be ignored and the case decided as if it was non-existent..... The order allowing the appellant to call the additional evidence is dated 17.8.1942. The appeal was heard on 24.4.1942. There was thus no examination of the evidence on the record and a decision reached that the evidence as it stood disclosed a lacuna which the court required to be filled up for pronouncing the judgment” (Emphasis added)

41. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.

In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.4.1999 is just to be ignored.”

The law laid down by the Supreme Court in the case of **Ibrahim Uddin** (*supra*) is very clear that the application filed at the appellate stage for leading additional evidence is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on

record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. This clearly has not been done in the present case.

In view thereof, the present civil revision petition is allowed and the impugned order dated 27.09.2018 (Annexure P-4) is set aside. The lower Appellate Court is directed to consider the application for additional evidence (Annexure P-2) at the time of final hearing in the appeal, in accordance with law. Pending applications, if any, also stand disposed off.

August 18, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO