

CR-1096-2022
Decided on : 29.03.2022

Versus

Present : Mr. S.S.Salar, Advocate
for the petitioners.

The petitioner by way of instant petition is seeking quashing of order dated 16.03.2022 (annexure P-9) passed by Lower Appellate Court whereby application moved by the respondent under Order 41 Rule 27 for leading additional evidence was allowed.

Learned counsel for the petitioner *inter alia* contends that since the respondent-plaintiff had not approached the Court with clean hands by concealing true and material facts coupled with the fact that he was unable to prove his willingness and readiness to perform his part of contract with respect to the agreement to sell dated 14.12.2010 executed by them in his favour qua land measuring 2 bigha 17 biswas comprised in the land bearing khewat/khatauni No.23 min/19/29 and Khasra No.46 and 71 situated at Ratpur, H.B.No.116 P.O. Pinjore Tehsil Kalka and District Panchkula, as per the jamabandi for the year 2009-2010, therefore, his suit was rightly dismissed by the trial Court vide judgment and decree dated 01.04.2016. It

was submitted that the Demand Drafts/Pay Orders were not duly proved by PW-2 Harwinder Singh and PW-3 Anil Kumar in accordance with the law of evidence, therefore, the respondent at this stage cannot be allowed to lead additional evidence as it would amount to filling up of lacunae in this case. Learned counsel submitted that the respondent was well aware about the mode of proof of the said documents and even after being granted sufficient opportunities, the respondent failed to lead necessary evidence in that regard during the course of trial. Moreover, no application for leading additional evidence was moved during the trial, therefore, allowing the application for leading additional evidence at this belated stage of appeal would be prejudicial to the petitioner.

Heard learned counsel and perused the relevant material on record including the impugned order.

This Court does not find any merit in the submissions made by counsel for the petitioner. Admittedly, all the documents, which the respondent-plaintiff wants to adduce by way of additional evidence, already stand exhibited before the trial Court. Still further, it is also a matter of record that PW-2 Harwinder Singh, Sr. Deputy Manager of ICICI Bank Ltd. had brought along the summoned record as well as placed on record all the documents, which are now being sought to be proved. An objection qua admissibility and mode of proof of the aforementioned documents was inserted at the end of the examination-in-chief of both the bank witnesses i.e. PW-2 Harwinder Singh and PW-3 Anil Kumar respectively. No specific objection was raised when the documents were exhibited.

In the circumstances, it cannot be said that the respondent-

plaintiff by moving an application under Order 41 Rule 27 CPC was trying to fill any lacunae as no fresh evidence was intended to be introduced. It is not even the case of the petitioner-defendant that the said evidence was available at the time of trial and yet it was not produced by respondent-plaintiff. Admittedly, all the documents are bank documents, hence, there is no question of any fabrication being carried out. Further, the additional evidence would be relevant for a just decision of the case in order to do substantial justice between the parties. Needless to add that the petitioner-defendant shall get an opportunity to rebut the evidence so led by the respondent-plaintiff.

Hence, no ground is made out to interfere in the impugned order passed by the Court below. Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

29.03.2022

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