

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

RSA-820-2022 (O&M)
Date of decision: 18.04.2022

Guru Nanak Dev University College and others

....Appellants

Versus

Ashwani Kumar @ Ashwani Kumar Saini

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.K.Dogra, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

The defendants-appellants assail the concurrent findings of fact arrived at by the courts below while decreeing the suit for recovery of Rs.5,00,000/- alongwith interest at the rate of 6% per annum from the date of institution of the suit till its realization. The plaintiff (respondent herein) is a transporter. His services were engaged in order to provide two buses for a period of 5 years at the rate of Rs.50,000/- per month for each bus. It is the case of the plaintiff that the defendants after availing the services of transportation of the student for a period of 14 months, have only paid Rs.8,00,000/- whereas an amount of Rs.6,00,000/- has not been paid. The defendants contested the suit alleging that the plaintiff had only provided one bus which was used for a period of 13 months. Both the courts found that although the agreement between the parties is silent with regard to the quantum of lease money, however, from the evidence available on the file, it is safe to conclude that the

buses were hired on a monthly amount of Rs.50,000/-. The courts further found that the buses have been used for a period of 13 months and not 14 months. Thus, both the courts decreed the suit for Rs.5,00,000/-.

Alongwith the appeal an application for permission to lead additional evidence has been filed in order to produce and prove certain receipts. The appellants wishes to prove that apart from Rs.8,00,000/-, another amount of Rs.1,60,000/- has been paid. It is asserted that the aforesaid documents could not be produced due to lack of coordination between the employees of the College and the University.

Learned counsel representing the appellants contends that this Court should allow the application for permission to lead additional evidence in order to prove the receipts.

An application under Order 41 Rule 27 can be allowed only if the appellant makes out a case for permission to lead additional evidence. Rule 27 of Order 41 reads as under:-

"Production of additional evidence in Appellate Court"

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it

to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

In the first part, the Appellate Court can allow an application to produce additional evidence if the court below has refused to admit the evidence, which ought to have been admitted. In second part, the party seeking to produce additional evidence is required to establish that notwithstanding the exercise of due diligence, such exercise was not in his knowledge or could not, after due diligence, be produced before the court below. In the present case, the appellant has pleaded lack of coordination between the employees of the College and the University. Such ground does not satisfy the requirements of the second part.

In the next part, the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

Even if additional evidence is allowed, it does not prove that the plaintiff has been paid the entire amount. The plaintiff has been litigating in the courts for more than last four years. The trial court has awarded an amount of Rs.5,00,000/- alongwith interest at the rate of 6% per annum from the date of institution of the suit till its realisation.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

18.04.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE