

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

Sr. No.114

CR-3476-2021

Date of Decision: 31.01.2022

MANOHAR LAL JAIN

...Petitioner

VERSUS

DHANWANT SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Atul Goyal, Advocate
for the petitioner.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

Challenge in the present revision petition is to the order dated 24.11.2021 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Panchkula, thereby dismissing the application for recalling of PW-4 for further cross-examination.

Perusal of the record reveals that initially respondent-Dhanwant Singh filed a suit for mandatory injunction, thereby directing the defendant No.1 to obtain permission to sell from defendant No.2 in respect of Industrial Plot No.24, Industrial Area, Phase II, Panchkula, in favour of the plaintiff as per conditions of allotment and agreement to sell dated 20.06.2009 and further sought a decree for permanent injunction. Besides the same, a suit for possession by way of specific performance of the agreement to sell dated 20.09.2009 and supplementary dated 15.07.2017 by executing and registering the sale deed qua plot No.24, as detailed in the head note of the suit, was sought.

It was during the pendency of the present suit, that Dhanwant Singh appeared in the witness box as PW-4. After recording of his

statement, an application was filed by defendant No.1-present petitioner, for recalling of PW-4 Dhanwant Singh, for further cross-examination. However, after seeking reply to the said application, vide impugned order dated 24.11.2021, the said application was dismissed.

Feeling aggrieved by the dismissal of the aforesaid application, the present revision petition has been filed.

Now, it is submitted by learned counsel for the petitioner that learned Lower Court had wrongly dismissed the application for recalling of witness-Dhanwant Singh, for further cross-examination. Learned counsel further submits that the cross-examination of PW-4 Dhanwant Singh, was completed on 04.01.2020. However, subsequently the petitioner's son namely, Vikas Jain, found that recording of telephonic conversations taken place between respondent No.1/plaintiff, and petitioner's son on 09.03.2012 as well as 19.03.2012. The said conversations were found in the old phone of the petitioner's son, as plaintiff and petitioner's son knew that the telephonic device of Vikas Jain, was such, where all calls were automatically recorded.

However, it is pertinent to mention here that even though, now it is submitted that it was in the old phone the conversations were recorded, but the application for recalling Dhanwant Singh, is there on the record as Annexure P-3. Perusal of the same reveals that nowhere, the petitioner had stated about the recording of the conversations in the old phone. It has simply been stated there that defendant No.1 (present petitioner) has recently come across two telephonic conversations between plaintiff and his son, where the plaintiff had asked for blank signed papers for being used before the Hon'ble Supreme Court, where SLP, filed by the applicant was

pending, at that time. The assertion of having come across the telephonic conversations, as such, is not specifically mentioned. It is a vague plea, so pleaded in the application.

It is pertinent to note that the lower Court in the impugned order has categorically stated that the alleged conversations were stated to be of 09.03.2012 and 19.03.2012. The witness Dhanwant Singh tendered his affidavit on 09.08.2019 and thereafter, he was examined on several dates i.e. 09.08.2019, 07.09.2019, 09.09.2019, 10.09.2019, 19.12.2019 and 04.01.2020. It was only after conclusion of his statement that the present application has been filed. In fact, two opportunities had been availed by the present petitioner to lead his evidence and thereafter, the application had been filed. It is very surprising that the conversations, which allegedly took place in the year 2012, did not come to the notice of the petitioner. Now, the plea of same having been retrieved from the old phone is though taken, but however, in the application itself, no such plea has been taken. It is so mentioned in the grounds of revision. As such, the same appears to be an afterthought. When full opportunity had been availed by the petitioner to cross-examine the plaintiff, when he stepped into witness box, no such ground is made out for recalling of the plaintiff-respondent, for further cross-examination.

Hence, there is no merit in the present petition and the same is accordingly dismissed.

(ARCHANA PURI)
JUDGE

31.01.2022

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No