

CR-4916-2022

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

CR-4916-2022

Date of Decision: November 16, 2022

Brij Lal

...Petitioner

Versus

Rajender

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Manish Mehta, Advocate for the petitioner-defendant.

DEEPAK GUPTA, J.(Oral)

Civil suit titled as “*Rajender vs Brij Lal*” (CNR No.HRNRA0-0004862017) was at the stage of rebuttal evidence and arguments before Ld. Trial Court, when defendant-petitioner moved an application for additional evidence. That application has been dismissed vide impugned order dated 11.10.2022 (copy Annexure P-1), which has been assailed by way of this revision.

2. Learned counsel for the petitioner submits that evidence had been closed earlier by the petitioner-defendant by making a statement through his counsel on 29.01.2019. Later on, defendant later on came to know that evidence of Building Expert and Clerk of the Municipal Committee is necessary to decide the controversy.

3. Having heard learned counsel for the petitioner and after perusing the impugned order, I do not find merit in the revision.

4. It will be apt to reproduce the relevant portion of the impugned order:

“5. After having heard learned counsel for the parties and after having gone through the case file minutely, this Court has arrived at the

*conclusion that the application in hand deserves to be dismissed and in this context this court finds it appropriate to maintain that the evidence of the defendant was closed by learned counsel for the defendant and the order has become final as the same has not been challenged by the defendant. In **Bhim Raj & Ors. Vs. Jai Bhagwan & Ors. 2000 (2) LJR 469 (P&H)**, it was hold by the Hon'ble High Court that "when an order by the Court closing the evidence of defendants is passed, the order became final if unchallenged. The defendant cannot be allowed to produce some evidence by way of additional evidence without bringing their case within the provisions i.e. in spite of exercise of due diligence."*

6. It is not disputed that the code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002 The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence.

7. Perusal of the case file shows that the case was fixed for defendant evidence on 09.04.2018 and thereafter, defendant was given ten effective opportunities and on 29.01.2019 the same was closed by learned counsel for the defendant vide his statement. Thereafter, the case was adjourned for rebuttal evidence on 14.02.2019 and the present application was moved on 22.09.2021, so, it cannot be presumed that the defendant was not aware about the additional evidence. The defendant has failed to exercise due diligence. No fact has been produced before the Court to satisfy the conscious of the Court that he was vigilant enough to defend his case and inadvertently some evidence has been left unexamined. Furthermore, it is not the case of the defendant the evidence which he wants to lead in additional evidence was not in his custody and he has got the record after his evidence has been closed.

8. As far as the authority relied upon by learned counsel for defendant is concerned, this court is of the view that the observations made in the authority (Supra) is distinguishable from the facts of the present case.

9. Hence, it is settled law that application for additional evidence

cannot be allowed if the party wants to fill up the lacuna in his case. Therefore, this Court is of the view that the applicant by way of this application wants to fill up the lacuna, which cannot be allowed. Thus, this Court sees no justification to provide opportunity to the defendant to lead additional evidence. Hence, application for leading additional evidence is, hereby, dismissed.

5. Defendant himself having closed the evidence on 29.01.2019 after availing as many as 10 opportunities, cannot be allowed to plead that it was later on revealed that evidence of Building Expert or the Clerk of the Municipal Committee was necessary. As observed by Ld. Trial Court, after the case was adjourned for rebuttal evidence on 14.02.2019, the application for additional evidence was moved more than three years later, on 22.09.2021. The application evidently appears to be a ploy to delay the matter with no merit therein.

6. Finding no illegality in the impugned order, present revision is dismissed.

November 16, 2022

sarita

(DEEPAK GUPTA)

JUDGE

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