

259

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

CR-332-2020 (O&M)

Date of Decision:- 01.12.2023

RAJNEESH KUMAR

...Petitioner

Vs.

MANDEEP SHARMA AND ORS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Ms. Ekta Thakur, Advocate for the petitioner.

Mr. Gurasis Singh, Advocate for Mr. Bhupender Singh,
Advocate for respondent No.1.

Mr. Vivek Gupta, Advocate for respondent No.3.

AMARJOT BHATTI, J. (Oral)

1. The petitioner has filed civil revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 06.01.2020, Annexure P-1, passed by learned Additional Civil Judge (Senior Division), Hoshiarpur dismissing the application for additional evidence.

2. Learned counsel for the petitioner argued that the present petitioner has relied upon one letter dated 28.10.1994, Annexure P-6, which is mark 'X' in the trial Court file to establish that the loan account was fully adjusted and one letter was issued in favour of Sh. Paras Ram son of Diwan Chand and Gurdial Singh son of Paras Ram. However, the said letter could not be proved by examining the concerned Bank official. The petitioner was under the impression that the said letter is *per se* admissible. The entire case of the present petitioner is based on the said letter. Therefore, in the interest of justice, the petitioner may be given one

opportunity to prove the said letter by examining the concerned bank official.

3. On the other hand, learned counsel for the respondents pointed out that the application has been filed at a belated stage. The petitioner was required to prove the said letter when the case was fixed for their evidence. The application for additional evidence has been filed at a belated stage to fill up the lacuna in the case. All these facts were rightly considered by the trial Court and the application seeking permission to lead additional evidence was rightly declined by passing impugned order dated 06.01.2020. The civil revision preferred by the present petitioner is without merits.

4. I have considered the arguments and have gone through the record. There is copy of plaint (Annexure P-2) according to which Rajnish Kumar has filed suit for declaration regarding the land as detailed in the plaint against Mandip Sharma and another. The perusal of plaint shows that the case of plaintiffs is based on clearance certificate dated 28.10.1994 allegedly issued by UCO bank. The written statement filed by the defendant No.1 is Annexure P-3 where it is pleaded that UCO Bank filed a suit for recovery which was decreed against Paras Ram and Gurdial Singh on 12.11.1990 and during the execution proceedings, the defendants had purchased the property in auction being highest bidder. The entry was duly made in the revenue record on 12.06.1993 regarding auction of 25 Kanal – 11 marlas of land in favour of the defendants. The plaintiffs led their evidence whereas the defendants also led their evidence when the application seeking permission to lead additional evidence was filed on 16.12.2019 which is Annexure P-4. The application was contested by

defendant No.1 by filing reply, which is Annexure P-5. Ultimately the said application was declined by passing the impugned order dated 06.01.2020 (Annexure P-1). It is rightly held by the trial Court that the plaintiffs were required to prove the said clearance certificate Mark 'X' in affirmative. It is further pointed out that even in the affidavit tendered by the plaintiffs the document was mentioned as mark 'X'. At that relevant time, no bank official was examined to prove the said clearance certificate. It is also matter of record that the case was fixed for rebuttal evidence if any and arguments when this application has been filed. It cannot be ignored that the entire case of the plaintiffs is based on the aforesaid clearance certificate. For proper adjudication of the case, it is required whether any such clearance certificate mark 'X' was issued by the bank in favour of Paras Ram and Gurdial Singh or not. For delay in filing the application, the other party can be compensated by imposing costs. Therefore, for the proper final adjudication of the case, the civil revision preferred by the petitioner is allowed and the impugned order dated 06.01.2020 passed by Additional Civil Judge (Sr. Divn.), Hoshiarpur is set aside by directing the trial Court to give only one effective opportunity to prove the said disputed clearance certificate mark 'X' by taking the summons *dasti* at their own responsibility subject to payment of costs of Rs.10,000/- to the defendants.

5. The Civil Revision is, accordingly, allowed.

Pending application (s), if any, also stands disposed of.

01.12.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No