

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

Civil Revision No.5113 of 2015 (O&M)

RESERVED ON : 06.02.2023

DATE OF DECISION : 14.02.2023

Sukhwinder Singh

.....Petitioner

versus

Dev Singh

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Deepak Verma, Advocate for the petitioner

Mr. Naveen Batra, Advocate for the respondent

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ALKA SARIN, J.

The present revision petition has been filed impugning the order dated 14.07.2015 passed by the Trial Court whereby application filed by the plaintiff-petitioner for leading additional evidence has been dismissed.

The brief facts relevant to the present case are that the plaintiff-petitioner filed a suit for specific performance of agreement to sell dated 27.04.2010. In the written statement the agreement to sell was denied. During the pendency of the suit, an application was filed for adducing additional evidence. A perusal of the said application (Annexure

P-3) reveals that the additional evidence sought to be produced *inter-alia* included examination of Gurwinder Singh, Stamp Vendor along with his Register dated 27.04.2010 to prove that the defendant-respondent had purchased the stamp papers on 27.04.2010 for the purpose of executing the agreement to sell. The plaintiff-petitioner also wanted to produce as additional evidence an entry in the Register No.142 dated 14.06.2010 of the Treasury, entry dated 14.06.2010 of the scribe Krishan Gopal and entry dated 11.06.2010 of the stamp vendor Resham Lal. It was averred in the application that the said evidence could not be adduced in the affirmative due to the reason that the documents were to be put to the defendant-respondent who did not step into the witness box. Reply was filed to the said application by the defendant-respondent. Vide the impugned order, the application for additional evidence was dismissed.

The learned counsel for the petitioner would contend that the attorney of the defendant-respondent had appeared in the witness box and the documents could not be put to him in his cross-examination and, therefore, the necessity of filing the present application for adducing additional evidence arose. The counsel would further contend that additional evidence could be permitted to be led at any stage of the suit. In support of his arguments, reliance has been placed upon **K.K. Velusamy vs. N. Palanisamy [2011 (2) RCR (Civil) 875 (SC)]**, **Shahabad Coop. Sugar Mills vs. M/s Markanda Sugar Traders & Anr. [2012 (4) RCR (Civil) 620]**, **Narinder Kumar vs. Shri Sat Narayan Mandir & Anr. [2011 (3) RCR (Civil) 87]**, **Rozdar Khan vs. Isab & Ors. [2014 (79) RCR (Civil) 78]**, **Jeeto @ Smt. Manjit Kaur vs. Union of India [2007**

(4) Civil Court Cases 678 (P&H)], Hans Raj vs. Surinder Kaur & Ors. [2010 (2) Civil Court Cases 377 (P&H)] and Phuman Singh & Anr. vs. Hazara Singh & Ors. [2009 (3) RCR (Civil) 671].

Heard.

In the present case the categorical stand of the defendant-respondent in the written statement was that the agreement to sell was false, frivolous and a fabricated document. The onus to prove the agreement to sell was on the plaintiff-petitioner. The application filed for additional evidence was totally bereft of any details as to when the plaintiff-petitioner gained knowledge of the said documents. A perusal of the application reveals that the only ground for leading additional evidence, as stated in the application, is that since the defendant-respondent did not step into the witness box hence the documents could not be put to him, though it is an admitted case that the attorney of the defendant-respondent stepped into the witness box and the documents were not put to the said attorney. In the case of *K.K. Velusamy (supra)* relied upon by the counsel for the petitioner, it has been held by the Apex Court as under :

“16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will

assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic

record, the court may also listen to the recording before granting or rejecting the application.”

In the present case, the *bonafides* on the part of the plaintiff-petitioner are questionable in as much as all the documents were well within the knowledge of the plaintiff-petitioner. He chose not to produce them in the affirmative. The Supreme Court in the case of *K.K. Velusamy (supra)* has held that if the Court is satisfied that the non-production earlier was for valid or sufficient reasons, production of additional evidence may be allowed. However, in the present case no valid or cogent reasons are coming forth for not producing the documents earlier. There is no quarrel with the proposition of law as laid down in the judgments referred to by the counsel for the plaintiff-petitioner. However, the facts of each case need to be dealt with. In the present case, the *bonafides* of the plaintiff-petitioner are totally wanting.

In view of the above, I do not find any illegality or infirmity in the order passed by the Trial Court. There is no error of law or jurisdiction. The present revision petition is totally devoid of any merits and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

14.02.2023
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
