

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

118

CR-524-2023

Date of Decision :25.01.2023

Prem Singh**...Petitioner**

Versus

Balbir Singh**...Respondent****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Avnish Mittal, Advocate for the petitioner.

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Harsimran Singh Sethi, J. (Oral)

In the present revision petition, the challenge is to order dated 02.01.2023 (Annexure P/7) passed by the trial Court by which, the application filed by the petitioner-plaintiff for leading additional evidence has been dismissed.

It may be noticed that the petitioner-plaintiff had filed a suit for specific performance of 'agreement to sell' dated 14.12.2015. It is a conceded position that in reply to the said suit, the defendant had come up with the plea that he had not entered into any such agreement to sell, specific performance of which is being sought in the suit and the defendant denied the execution of the said 'agreement to sell' at threshold and thereafter issues were framed so as to allow the respective parties to lead their evidence. It is also conceded position that for leading affirmative evidence, due opportunities were given to the petitioner-plaintiff, after which, his evidence was closed and even the defence evidence has been

closed and the case is fixed for arguments and it is at this stage, the petitioner-plaintiff filed an application seeking permission to place on record additional evidence so as to examine Notary Public, Rajpura, who attested the agreement in question and the signatures of the defendant on the record of the said Notary Public and also to examine the Handwriting Expert on the ground that the same is necessary and essential for the fair adjudication of the case.

The said application was decided by the Court below vide order dated 02.01.2013 (Annexure P/7) declining the prayer of the petitioner-plaintiff for leading additional evidence on the ground that despite clear indication by the defendant that he never executed the document in question, petitioner-plaintiff led the evidence, which was thereafter closed after granting sufficient opportunities and as the petitioner-plaintiff has not reserved his right for rebuttal, at this stage, the evidence sought to be produced on record by the petitioner-plaintiff is only to fill the lacuna and to delay the proceedings. The said order of the Court below is under challenge in the present revision petition.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

It is not the case of the petitioner-plaintiff that he was not given enough opportunities to lead evidence in affirmative. It is also conceded during the argument that the execution of the document, specific performance of which is being sought by the petitioner-plaintiff was denied at the initial stage itself to have been executed by the defendant. By prayer of additional evidence, the petitioner-plaintiff trying to prove the execution of a document, execution of which was being denied by the defendant

at the stage of filing the written statement. Nothing prevented the petitioner-plaintiff to examine the Notary Public, Rajpura or even Handwriting expert while leading affirmative evidence for which, he was given due opportunities. Once, these facts were in the knowledge of the petitioner-plaintiff, the said witnesses could have been examined while adducing the evidence in affirmative and no valid justification arises to allow the petitioner-plaintiff to lead additional evidence at this stage and that too only to fill up the lacuna.

Even otherwise, learned counsel for the petitioner-plaintiff conceded the fact that while closing the evidence, the petitioner-plaintiff had not reserved his right to adduce evidence in rebuttal. That being so, the rejection of the application for leading additional evidence by the Court below cannot be treated to be against law or the facts and circumstances of the present case especially, when the evidence of the defendant has already been closed.

Learned counsel for the petitioner-plaintiff has placed reliance upon the judgment of Coordinate Bench of this Court in **C.R. No.2463-1994** titled as **Ram Singh (Minor) vs. Prithi and others** decided on 07.09.1996 to contend that no party can be denied the right to examine any witness on the ground that the same could have been adduced at an early stage. Though, there is no dispute with the said proposition of law but the said law is to be applied keeping in view the facts and circumstances of each case. Keeping in view the facts and circumstances of the present case, no benefit of the judgment in **Ram Singh (supra)** can be allowed in favour of the petitioner-plaintiff being distinguishable.

judgement of the Coordinate Bench of this Court in **CR-6202-2010** titled as ***Harkewal Kaur and another vs. Sri Krishan Aggarwal and another*** decided on 10.03.2011 to submit that leading of additional evidence should be allowed if the Court is satisfied that despite due diligence, the said evidence which was not in the knowledge of the party concerned, could not be produced at the time when the evidence was led. The said judgment is not applicable in the facts and circumstances of the present case for the reason that keeping in view the denial of execution of agreement to sell in question by the defendant in the written statement itself, the petitioner-plaintiff could have examined the handwriting expert or Notary Public, Rajpura to substantiate his claim and to negativate the stand taken by the defendant.

Keeping in view the above, there is no infirmity in the order passed by the Court below hence, no interference is called for by this Court and the revision petition is accordingly dismissed.

January 25, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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