

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

203

CR No.8261 of 2018 (O&M)
DATE OF DECISION : 01st FEBRUARY, 2023

Jethu Ram

.... Petitioner

Versus

Meena Rani

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. B.S. Mittal, Advocate for the petitioner.

Mr. R.S. Dhaliwal, Advocate for the respondent.

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India praying for setting aside the order dated 29.10.2018 (Annexure P-5) passed by Civil Judge (Junior Division), Sunam, whereby the application filed by the petitioner/plaintiff for additional evidence was dismissed.

The facts of this case are that the petitioner has filed a suit for possession qua the property mentioned in the suit claiming on the basis of title. Earlier also, the defendant had filed a suit for permanent injunction against the present plaintiff, in which the Court had passed a decree to the effect that the present petitioner, who is plaintiff in the present suit, could not evict the respondent/defendant except in due course of law. Hence, the present suit was filed.

After the evidence of the plaintiff and the defendant was over, the petitioner filed an application for additional evidence with a prayer to produce and prove the statement made by the defendant in the previous proceedings. The said application has been declined by the trial Court, mainly, on the ground that the plaintiff could have led this document in evidence earlier and that the present application has been filed only to prolong of the proceedings of the suit. Another ground taken by the trial Court is that the petitioner is trying to fill up the lacuna left in his case. It is against the said order, that the present petition has been filed.

Arguing the case, learned counsel for the petitioner has submitted that the defendant appeared as a witness before the trial Court in the present suit on 04.10.2018. Thereafter only, the occasion to contradict and confront the defendant with the earlier statement arose and accordingly the application was filed for permission to lead additional evidence only on 25.10.2018. Therefore, there is absolutely no delay on the part of the petitioner in filing the application. The trial Court has gone wrong in observing that the petitioner had attempted to delay the trial.

On the other hand, learned counsel for the respondent has submitted that the trial Court has rightly passed the impugned order. The petitioner had every opportunity to lead any document considered appropriate by him, in his evidence; when his evidence was being led or, at the best, when the defendant was being examined and cross-examined before the trial Court. Therefore, there is absolutely no reason for permitting additional evidence to the petitioner, at this stage. The counsel has also reiterated the assertion that the petitioner is trying to fill up the

lacuna left in his case. Hence, the present petition deserves to be dismissed.

Having heard the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the petitioner. It is not even in dispute that earlier the defendant had filed the suit and decree was passed by the trial Court wherein it was ordered that the present petitioner could not evict the present respondent from the property in question except in due course of law. The petitioner has only availed the legal remedy to evict the respondent, in accordance with law and the present suit has been filed by him. In the suit, the petitioner discharged his burden of proof; as required of him in the first instance. The occasion to confront or corroborate the respondent with the earlier statement or to prove such earlier statement arose only after her statement as witness in the present case came on record before the trial Court. There was no occasion for the petitioner to anticipate in advance as to what statement, the defendant would be making in the suit. After the statement of the defendant was recorded in the present suit, the petitioner has moved the application within a period of three weeks only. Therefore, he cannot be blamed for making attempt to delay the proceedings of the suit. Otherwise, the earlier statement of the defendant in the suit becomes relevant under Chapter II of the Indian Evidence Act, 1872. Therefore, the petitioner is fully entitled to produce the same as per the provisions contained in Sections 145 and 157 of the Indian Evidence Act. Same are even to be presumed to be correct as per Section 80 of the Indian Evidence Act. Therefore, the petitioner was well within his right to seek permission for leading additional evidence. Needless to say that if the

said statement is brought on record, the trial Court could have granted an opportunity to the defendant as well, to say whatever she intended to say, about the said statement. Hence, the conclusion of the trial Court in that regard is found to be deficient and non-sustainable.

Although the trial Court has also written that the plaintiff was trying to fill up the lacuna left in his case, however, this approach of the trial Court is totally wrong. The plea against “filling up the lacuna”, at the best, can be raised in a criminal trial. This is not a concept of civil law; where the parties are in adversarial litigation and they are free to avail even alternate pleas permitted by the Code of Civil Procedure, 1908. Needless to say that in civil proceedings the standard of proof is not of proving facts beyond reasonable doubt, rather, it is only brining the facts within preponderance of probabilities. In case where the standard of proof is of proving facts beyond reasonable doubt, the policy of law of evidence is that once a doubt has emerged in the assertions of the party then the other party should not be deprived of the benefit of such doubt. Therefore, the former party should not be lightly permitted to make attempt to remove that doubt by filling up the lacuna from which such doubt had emerged. Therefore, any aspect of filling up of alleged lacuna, to exclude any benefit of doubt of which the accused could have been entitled to in a criminal case; is not relevant in civil litigation, at all. Accordingly, there is nothing known as filling up the lacuna in the civil proceedings. Hence, the observations of the trial Court in that regard is totally non-sustainable and non-desirable.

Accordingly, the present petition is allowed and the order passed by the trial Court is set aside. The application filed by the

petitioner for additional evidence is ordered to be allowed. The trial Court is directed to grant opportunity accordingly.

01st FEBRUARY, 2023
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>