

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

CR-724-2023 (O&M)

Date of Decision: 03.02.2023

Harwinder Singh

....Petitioner

Versus

Prem Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sunny K. Singla, Advocate for
Mr. Surajpreet Singh Kaang, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 18.01.2023 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Malerkotla, whereby in a suit for recovery, application filed by petitioner/plaintiff for leading additional evidence, was dismissed.

2. Given the nature of order being passed, there is no necessity to issue notice to respondent/defendant, as no prejudice would be caused to him. Notice to respondent is thus dispensed with.

3. I have heard learned counsel appearing on behalf of petitioner/plaintiff and gone through the case file.

4. From the pleadings on record, it is borne out that petitioner/plaintiff had specifically pleaded in para No.4 of the plaint about the fact of J-Forms being the very basis of the suit for recovery but under the legal advice of the earlier counsel engaged by him, concerned Clerk of the Market Committee was not summoned to produce the original thereof, though a photocopy of the same was all throughout in the possession of petitioner/plaintiff. It is only after petitioner/plaintiff had changed his

counsel that he was advised that the original thereof was required to be produced in support of his claim.

5. In the premise, the mistake of not summoning the witness in question seems to be inadvertent on the part of petitioner/plaintiff and perhaps under *bona fide* legal advice he had moved the application for permission to lead additional evidence. Hence, I am of the view that merely because the trial would get delayed ought not to be the reason of denial to petitioner to produce original document in question since the same goes to the root of the matter forming the very basis of his claim for recovery of the money, as mentioned in the suit.

6. Resultantly, the impugned order (Annexure P-5) is set aside and petitioner is allowed to produce original document by way of summoning concerned witness. However, it is made clear that in case defendant's evidence is still not closed, the same shall not be put on hold on the ground that plaintiff's additional evidence is yet to be produced, which can be done when even defendant's evidence is being recorded.

7. Disposed of, accordingly.

8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 03, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No