

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 841/2023

Date of decision:07/02/2023

Mohar Singh

.....Petitioner

Vs.

Shanti and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.P.S.Jammu, Advocate for the
petitioner/plaintiff/appellant

Nidhi Gupta, J.

Present revision petition has been filed against the order dated 4.1.2023 passed by Id. Addl. Distt. Judge, Sirsa vide which application moved by the petitioner/plaintiff under Order 41 Rule 27 CPC for cross-examination of PW2 Mohar Singh has been dismissed.

It is submitted by the learned counsel for the petitioner that the PW2 Mohar Singh could inadvertently be not cross-examined on 17.9.2016 as evidence of the petitioner/plaintiff/appellant was closed by counsel. It is submitted that examination in chief of PW2 Mohar Singh was recorded on 17.9.2016 itself, however, evidence was inadvertently closed by

the counsel before the cross-examination of the said witness. It is submitted that the petitioner had accordingly filed application under Order 41 Rule 27 read with Section 151 CPC before the Ld. Lower Appellate Court for additional evidence for permission to cross examine Mohar Singh PW2, however, the application of the petitioner has been illegally and wrongly dismissed by the Ld. Lower Appellate Court. It is submitted that the petitioner is likely to suffer grave injustice and harm in case his application is not allowed and therefore, one effective opportunity be granted to him to lead evidence in support of his civil suit. It is submitted that despite due diligence the petitioner was unable to produce evidence, as PW2 was having a bona fide belief that his cross-examination was complete.

No other argument has been raised on behalf of the petitioner.

Heard Ld. Counsel.

In the present case admittedly, the civil suit filed by the petitioner stands decided vide judgment and decree dated 23.5.2017 (Annexure P-2). In the year 2017 itself the petitioner filed the present appeal (Annexure P-3). The application under Order 41 Rule 27 CPC (Annexure P-4) was filed by him only on 2.1.2023. A perusal of the said application as well as the contents of the present revision petition reveals that the only reason given by the petitioner for not cross-examining said witness PW2 is due to inadvertence and accidental slip. It has been submitted by the learned counsel for the petitioner that thereafter, even the counsel has been changed in the above mentioned appeal. However, the basic reason for not cross examining said witness is only “inadvertence and accidental slip”.

A perusal of Order 41 Rule 27 CPC shows that there are 3 conditions stipulated therein, under which permission can be granted to adduce additional evidence the same being: -

“27. Production of additional evidence in Appellate Court. - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined”.

Admittedly the petitioner's case does not fall under any of the above three situations. It is an established position in law that party cannot be permitted to lead additional evidence to fill lacuna in their case. Moreover, learned counsel for the petitioner is unable to deny the finding of the Ld. Lower Appellate Court in the impugned order as contained in para 8 thereof:-

“The trial court file seen. It shows that the cross- examination of Mohar Singh was deferred on 17.09.2016. The case remained pending for completion of plaintiff evidence on 29.09.2016, 13.10.2016, 18.10.2016, 25.10.2016, 07.11.2016

and it was closed by the counsel for plaintiff on 15.11.2016. The rebuttal evidence was also closed by counsel for plaintiff on 23.05.2017”.

Moreover, it has come on record that evidence of PW2 was available with the petitioner and examination-in-chief had been completed. Therefore, it cannot be said that despite due diligence cross-examination could not take place.

Accordingly, in view of the above uncontroverted factual as well as legal position, I find no merit in the present revision petition.

Dismissed.

07/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No