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

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Reserved on: 04.08.2023
Pronounced on: 14.09.2023

Ajay Singh Chaudhary and another
.....Petitioners

Versus

Shiv Raj Singh (now deceased) through his legal heirs
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Sahil Khunger, Advocate,
for the petitioners.

Mr. Rajesh Sethi, Advocate,
Mr. Arun Biriwal, Advocate,
Mr. Paramdeep Singh, Advocate and
Ms. Preeti Bansal, Advocate,
for respondent No.2/caveator.

NAMIT KUMAR, J.

1. The present Civil Revision has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 10.01.2023 passed by learned Civil Judge (Junior Division), Sonapat whereby the application filed by the petitioners/defendants under Order 18 Rule 17 read with 151 of Code of Civil Procedure, 1908 (in short CPC) for additional evidence was dismissed.

2. In brief the facts of the present case are that plaintiff Late Shiv Raj Singh filed a suit against his son Ajay Chaudhary and

Daughter-in-law Rajesh for declaration and permanent injunction to the

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effect that agreement to sell dated 21.07.2011 is illegal, wrong, null and void. The defendants while filing the written statement filed counter claim seeking relief of specific performance of the agreement to sell dated 21.07.2011 with the consequential relief of permanent injunction. Thereafter respondents/plaintiffs led their evidence and after culmination of evidence of plaintiffs, the defendants led their evidence and during evidence petitioners/defendants filed an application for comparison of signature of plaintiff and production of sale deed etc which was allowed by Ld. Civil Judge vide order dated 04.09.2018, thereafter aggrieved by this order, plaintiff challenged this order in this court in Civil Revision no. 6881 of 2018, which was dismissed on 05.07.2022 with the observation that defendants to conclude their evidence within a period of three months from the date on which the sale deed is produced before the trial court. Sale deed was produced by respondents/plaintiffs before trial court on 09.09.2022, the evidence of defendants was closed by the defendants on 06.12.2022, thereafter application dated 05.01.2023 to call stamp vendor and Rang Lal who is attesting witness and also for producing death certificate of Kaptan Singh who was also a witness, as additional evidence was filed under Order 18 Rule 17 CPC and same was dismissed by the trial Court vide impugned order. Hence present petition.

3. Learned counsel for the petitioner contended that the additional evidence which defendants want to examine and place on record were inadvertently left out by the counsel for the defendants/counter-claimants and the evidence of defendants was

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closed by their counsel. He further contended that the trial court without assigning any reason has dismissed the application. It was further argued that trial court while passing the impugned order failed to take into consideration that the application for additional evidence stood on a totally different footing and then it was argued that the trial court negated the fact while deciding the application that defendants have set up counter claim in which the main reliance of the petitioners/defendants is on the agreement to sell dated 21.07.2011 and it is utmost important to examine the witness stated in the application. Reliance was placed on judgments of this court in **Jaipal Vs. Hari Dass and Ors. 2017(2)ICC 483, Manmohan Singh Vs. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur and Ors. 2015(5)R.C.R.(Civil) 661, Robin James Vs. Gurdev Singh and Ors. 2019(1) Law Herald 915.** At last it was argued by the counsel representing petitioners that the petitioners have set up counter claim which is to be tried as a separate suit, so the impugned order should be set aside and application should be allowed.

4. *Per contra* the counsel representing respondents argued that the defendants/counter claimants availed as many as 8 effective opportunities including 3 last opportunities at the first instance but did not conclude their evidence and ultimately even at the second instance when this court vide its order dated 05.07.2022 granted the defendants another three months more time counted from the day from the production of original sale deed by the plaintiffs which was so produced in the trial court on 09.09.2022 and defendants could examine

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any number of witnesses including the witnesses now sought to be called as additional evidence but they did not do so, therefore they should be precluded and estopped from seeking the production of these witnesses in additional evidence. Learned counsel for respondents also brought the attention of this Court on relevant provisions of CPC and argued that Order 18 Rule 17A for additional evidence was introduced in CPC vide amendment in the year 1976 and the same was deleted vide amendment in year 2002 and such deletion of the provision was done with a view of avoiding delay in the decision of the suit at the first instance and relied on the judgment of Hon'ble Supreme Court in ***Salem Advocate Bar Association Vs. Union of India AIR 2003 (SC) 189***. Thereafter learned counsel referred to Order 17 of CPC and argued that an embargo has been created that the court will not give more than three adjournments to a party during the hearing of a suit. Learned counsel placed reliance on judgments of Hon'ble Supreme Court in ***M/s Bagai Construction Vs. M/s Gupta Building Material Sore 2013(3) RCR (Civil) 304, Ram Rati Vs. Mange Ram (dead) through LRs 2016(2) RCR (Civil) 464, M/s Shiv Cotex Vs. Tirgun Auto Plast P. Ltd and Ors. 2011(4)RCR (Civil) 807, Noor Mohammed Vs. Jethanand 2013 (2) RCR (Civil) 538***.

5. I have heard learned counsel for the parties at length and with their assistance perused the record.

6. The provision of Order 18 Rule 17-A CPC was deleted w.e.f. 01.07.2002. The purpose of deletion of said provision is to expedite trial of the case. However, even after deletion of said

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provision, the Court in exercise of power conferred under Section 151 CPC can allow any party to lead evidence even at a later stage, if it is necessary in the interest of justice, but such discretion should not be exercised in routine manner, mere on the asking and this power should not be exercised arbitrarily but only after applying judicial mind and keeping in mind the facts of the case. Reference could be made to verdict of Hon'ble Apex Court in ***Salem Advocate Bar Association*** (supra) wherein it has been clarified that on deletion of Order 18 Rule 17A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e., 1st July, 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order 18 Rule 17A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order 18 Rule 17A did not create any new right but only clarified the position. Therefore, deletion of Order 18 Rule 17A does not disentitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just.

7. In ***K.K. Velusamy Vs. N. Palanisamy 2011(2) R.C.R.(Civil) 875*** the Hon'ble Supreme Court explained the inherent power of Court under section 151 CPC and how cautiously the inherent powers are to be used: -

“10. The respondent contended that section 151 cannot be used for re- opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of section 151 has been explained by this Court in several decisions (See : Padam Sen v. State of UP-AIR 1961 Supreme Court 218; Manoharlal Chopra v. Seth Hiralal, AIR 1962 Supreme Court 527; Arjun Singh v. Mohindra Kumar - AIR 1964 Supreme Court 993; Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhay Lal, AIR 1966 Supreme Court 1899; Nain Singh v. Koonwarjee, 1970 (1) SCC 732; The Newabganj Sugar Mills Co.Ltd. v. Union of India - AIR 1976 Supreme Court 1152; Jaipur Mineral Development Syndicate v. Commissioner of Income Tax, New Delhi, AIR 1977 Supreme Court 1348; National Institute of Mental Health & Neuro Sciences v. C. Parameshwara, 2005(1) S.C.T. 534 : 2005 (2) SCC 256; and Vinod Seth v. Devinder Bajaj, 2010(3) RCR (Civil) 813 : 2010(4) R.A.J. 246 : 2010 (8) SCC 1. We may summarise them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular

procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an

express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.”

Further the Hon’ble Apex Court discussed the objective behind deletion of Order 18 Rule 17A:

“11. The Code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

12. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

8. The petitioner wants to adduce additional evidence of stamp vendor, attesting witness, death certificate of another witness regarding agreement to sell dated 21.07.2011, which clearly shows that none of the evidence on which petitioner wants to place reliance is subsequent to closing of his evidence on 06.12.2022, in other words it can be said that these evidence were already there before closing of defence evidence.

9. Perusal of zimni orders of trial court shows defendants availed as many as 8 effective opportunities to lead their evidence including last opportunities and even cost was imposed , thereafter three months were given by this Court to conclude their evidence but still no application to lead additional evidence was filed and defendants closed their evidence on 06.12.2022 and after one month of closing of

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their evidence, application for additional evidence was made on 05.01.2023 which clearly shows intention of defendants to delay and embarrass the trial and it can be said that these are the tricks and stratagem to prolong the trial. In **Noor Mohammed v. Jethanand, 2013(2) RCR (Civil) 538: (2013) 5 SCC 202** commenting on the delay caused due to dilatory tactics adopted by the parties, the Hon'ble Apex Court was compelled to say:-

"In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach."

10. Further in the judgment of Hon'ble Apex Court in **Gayathri Vs. M Girish 2016(3)RCR (Civil) 942** discussing that the

disease of prolonging the trial and seeking adjournments has to be curtailed :

“13. In the case at hand, it can indubitably be stated that the defendant-petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake! Arise! Oh Partha" is apt here to be stated for guidance of trial courts.”

11. In another judgment by Hon’ble Supreme Court ***M/s Shiv Cotex Vs. Tirgun Auto Plast P. Ltd. and others (supra)*** held as under:

“16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order 17 Rule 1 Civil Procedure Code is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order 17 Rule 1 Civil Procedure Code should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub - rule (1) of Order 17 Civil Procedure Code but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The

list is only illustrative and not exhaustive. However, the absence of the lawyer or his non - availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. Insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting the suit and producing its evidence. If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved no sympathy in second appeal in exercise of power under Section 100 CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed.”

12. Perusal of the petitioner-defendants’ application for additional evidence shows that there is not even a single averment to discharge the burden as to how despite of due diligence these facts

were not in their knowledge at the time of filing of written statement and even later at the time of evidence.

13. The petitioner-defendants have mentioned in their application for additional evidence and also argued that the evidence of the applicant was inadvertently closed by the counsel. This plea is of no use to the petitioners as inadvertence or negligence of counsel in discharge of his duty is no ground to allow additional evidence, reliance can be placed upon judgment of this Court in ***Lakhhbir Singh and others Vs. Kesar Kaur and Others 1984 CurLJ 599.***

14. This Court agrees with the contention raised by the learned counsel for petitioners that the counter claim filed by the defendant is to be tried as an independent suit, as it is itself clear from the bare reading of the provisions of the statute and also held by the Hon'ble Apex Court in plethora of judgments, but this contention does not contain any substance to set aside the order of the learned trial Court. The judgments relied upon by learned counsel for the petitioners are of no use to them as the facts and circumstances of those cases are distinguishable from the factual matrix of the case in hand.

15. Keeping in view the foregoing reasons and discussions detailed above, this court do not find any infirmity or illegality, much less perversity in the impugned order passed by the learned trial court. Hence finding the present petition as devoid of any merit and no illegality or irregularity in the impugned order, this Court does not find it a fit case to exercise its revisional jurisdiction and interfere with the

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order of learned Civil Judge, Sonipat. Therefore, the present petition is dismissed.

16. Dismissed.

14.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No