

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CR No.442 of 2021 (O&M)
Date of Decision : 07.02.2023**

Saurav Jain

....Petitioner

VERSUS

Mohan Lal

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vaibhav Sehgal, Advocate for the petitioner.

Mr. Keshav Pratap Singh, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 03.02.2021 (Annexure P-6) vide which the application for leading additional evidence filed by the plaintiff-petitioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for possession of property constructed on plot no.430 having an area of 100 sq. yards comprised in *khasra* no.697/358, *khata* no.632/657, by way of a specific performance of agreement dated 16.09.2015. It was averred in para 2 of the plaint that the plaintiff-petitioner has always been ready and willing to perform his part of the agreement. The defendant-respondent denied the agreement to sell in toto being a forged and fabricated document. In the alternative, it was pleaded that even if the agreement to sell is proved there was no readiness and willingness on the part of the plaintiff-petitioner. On 08.01.2018 the issues were framed and issue no.1 was specifically “*Whether plaintiff is entitled for the relief of possession by way of specific performance of agreement to sell dated 16.09.2015? OPP*”. The evidence of the plaintiff-petitioner started on

21.02.2018 and was closed vide order dated 22.04.2019 after availing 14 opportunities. The evidence of the defendant-respondent commenced on 24.05.2019 and was closed on 21.01.2020. Thereafter, arguments were heard on 28.01.2020, 03.02.2020, 04.02.2020 and 05.02.2020. On 05.02.2020, an application for leading additional evidence was filed wherein it was averred that additional evidence was warranted by law and equity and that the plaintiff-petitioner be allowed to produce the following as the additional evidence :

- (i) Accountant of the firm M/s Vardhman Trading Company, Ludhiana along with the account books of the firm M/s Vardhman Trading Company having the capital account of the plaintiff for the year 2015 to upto date.
- (ii) Concerned Clerk, Canara Bank, Court Road, Ludhiana along with the copy of statement account of Saving Bank Account of the plaintiff Sourav Jain.
- (iii) Concerned Clerk HDFC Bank, Mata Rani Chowk, Ludhiana along with the copy of statement account of Saving Bank Account of the plaintiff Sourav Jain.

A reply was filed to the said application. Vide the impugned order dated 03.02.2021, the application for leading additional evidence was dismissed. Hence, the present revision petition.

Learned counsel for the plaintiff-petitioner has contended that the additional evidence now sought to be produced is germane to the dispute and finds its basis in the pleadings of the parties. It is the contention of learned counsel for the plaintiff-petitioner that in the legal notice, which was served upon the defendant-respondent, even the details of the draft for the balance sale consideration were mentioned. It is further the contention that the plaintiff-petitioner has always been ready and willing to perform his part of the contract and the said additional evidence is only in furtherance of the pleadings of the plaintiff-petitioner. Learned counsel has relied upon the judgments of this Court in the cases of **Rekha Gaur vs. Veerpal Singh** [CR No.2713 of 2018 decided on 05.07.2022], **Baljeet Singh vs. Ram Pal & Ors.** [CR No.7913 of 2016 decided on 20.01.2020], **Gurdip Singh vs. Harpinder Singh Gill** [2020 (1) Law Herald (P&H) 323], **Mahinder Siri vs. Bhupinder Singh & Anr.** [CR No.1137 of 2016 decided on 31.01.2020], **Parveen Kumar vs. Khem Raj & Ors.** [CR No.2122 of 2018 decided on 29.05.2018], **Omwati vs. Anita Devi & Ors.** [2015 (61) RCR (Civil) 479], **Manmohan Singh vs. Davinder Kaur @ Mohinder Kaur @ Gurminder Kaur & Ors.** [2015 (5) RCR (Civil) 661], **Smt. Bhulia Devi vs. Smt. Sheela Devi** [1998 (2) RCR (Civil) 669] and that of the Hon'ble Supreme Court in the case of **K.K. Velusamy vs. N. Palanisamy** [(2011) 11 SCC 275].

Per contra learned counsel for the defendant-respondent has contended that the additional evidence now sought to be lead is in support of the plea qua readiness and willingness. It is further the contention that the categoric case of the plaintiff-petitioner was that he was always ready and

willing to perform his part of the contract, which fact was specifically denied in the written statement. Hence, the plaintiff-petitioner was alive to the fact that the averments made by him regarding the readiness and willingness were specifically denied by the defendant-respondent. It is further the contention that the plaintiff-petitioner failed to lead the said evidence in the affirmative to prove his readiness and willingness. Further, the plaintiff-petitioner while appearing as PW1 was put a suggestion regarding his bank accounts and he specifically stated that he could not tell the name of the bank as the same was confidential. It is further the contention that the plaintiff-petitioner was aware that he had to prove his readiness and willingness, however, the said evidence was not produced. Learned counsel for the defendant-respondent has further pointed out that after arguments were addressed on four different dates, the present application was moved which is nothing but an endeavour to fill in the lacuna in the case.

I have heard learned counsel for the parties.

In the present case the plaintiff-petitioner has come to Court for specific performance of the agreement to sell dated 16.09.2015. The specific case of the plaintiff-petitioner was that he was always ready and willing to perform his part of the contract, a fact which was categorically denied by the defendant-respondent besides denying the agreement to sell itself. As many as 14 opportunities were availed by the plaintiff-petitioner to lead his evidence and eventually the evidence of the plaintiff-petitioner was closed on 22.04.2019. Evidence of the defendant-respondent was closed on 21.01.2020. Thereafter, after the arguments were addressed on four different dates, the present application was filed. A perusal of the present application

for additional evidence reveals that it is totally bereft of any detail as to why the said documents, which were well within the knowledge of the plaintiff-petitioner relating to his own accounts, could not be produced at an earlier point of time. There is not a word about the due diligence or the relevance of the said documents to the case in hand. There cannot be any quarrel with the judgments relied upon by learned counsel for the plaintiff-petitioner. It is trite that in an appropriate case an application for additional evidence can be allowed provided the party is able to make out a case that despite due diligence the documents could not be brought on the record and that the application has been moved *bonafidely*. In the present case, the application itself is totally bereft of any details except for stating that the plaintiff-petitioner needs to lead additional evidence. Additional evidence cannot be lead as a matter of right. A case needs to be made out and in the present case the plaintiff-petitioner has miserably failed to make out the case of due diligence. Further still, it clearly appears to be a case of filling-in the lacuna in the case. It is trite that in a suit for specific performance of agreement, what needs to be proved is agreement to sell, payment of earnest money and readiness and willingness of the party. The evidence qua readiness and willingness had to be lead in affirmative, which the plaintiff-petitioner failed to produce. Even in the cross-examination, when suggestions were put to the plaintiff-petitioner, the plaintiff-petitioner responded by stating that the same are confidential and that he was unable even to disclose the name of the bank. It is only when the case was at the stage of arguments that the present application has been filed. Learned counsel for the plaintiff-petitioner has

not been able to convince this Court that the evidence sought to be produced as additional evidence could not be lead earlier despite due diligence.

In view of the above, I do not find any illegality or infirmity in the order passed by the Trial Court. The present revision petition, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

07.02.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO