

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(116)

CR No. 1001 of 2023
Date of Decision : 16.02.2023

Shamsher Singh

...Petitioner

Versus

Mito (since deceased) through her Lrs.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Arvind Thakur, Advocate for the petitioner.

Mr. Preetinder Singh Dhaliwal, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

The present civil revision has been filed challenging the order dated 19.01.2023 (Annexure P-1) passed by the learned Additional Civil Judge (Sr. Divn.), Barnala by which, the prayer of the petitioner-plaintiff for recalling DW5-Kusum for further cross-examination, keeping in view the certain facts, which have come to their knowledge after cross-examination of the said witness, which are just and proper for decision of the suit filed by the petitioner-plaintiff, has been declined.

Learned counsel for the petitioner-plaintiff argues that the suit has been filed by the petitioner-plaintiff for specific performance of the agreement to sell dated 01.06.2012 for which, out of the total sale consideration of ₹1,41,00,000/-, a sum of ₹65,00,000/- have already been paid but as the respondents-defendants failed to execute their part, the civil

suit for specific performance of the agreement in question was filed.

Learned counsel for the petitioner-plaintiff submits that in the written statement dated 10.11.2014 (Annexure P-5), the respondents-defendants completely denied the execution of any such agreement, the specific performance of which was being sought. The issues were framed and the petitioner-plaintiff has already completed his evidence and the defendants evidence is being led as of now.

Learned counsel for the petitioner-plaintiff argues that DW5-Kusum i.e. wife of the Stamp Vendor, namely, late Suresh Kumar gave her evidence through the affidavit dated 02.09.2022 and was cross-examined. The allegation of the petitioner-plaintiff that the said witness (DW-5) did not produce the full record of the sold stamp papers as she only conceded having one register of her husband, which was produced during the cross-examination. Learned counsel further submits that after the cross-examination was over, a fact came to knowledge of the petitioner-plaintiff that in criminal proceedings initiated against the petitioner-plaintiff by the respondent-defendant qua the agreement to sell in question by terming the said agreement to be a forged one, the Investigating Agency found two registers of the Stamp Vendor, which found mention in the challan hence, the factum of the second register, which the Investigating Agency found during the investigation in criminal proceedings, is to be put to the said witness, which is very material but the application filed for recalling the said witness has been declined by the trial court vide impugned order dated 19.01.2023 (Annexure P-1) on the ground that DW-5 was cross-examined thoroughly and in case, any document is to be proved, the same can be done

in the rebuttal evidence as proving of the agreement to sell as forged is upon the respondents-defendants and the petitioner-plaintiff has right to lead the rebuttal evidence. The said impugned order dated 19.01.2023 (Annexure P-1) is under challenge in the present petition.

Learned counsel for the petitioner-plaintiff argues that once, the court has not returned the finding that the evidence, which needs to be clarified is not a material fact but the prayer of the petitioner/applicant has been declined on the ground that the said evidence can be brought on record by way of rebuttal, the trial court should have granted the opportunity there and then in order to arrive at just and proper decision and the petitioner-plaintiff is even ready to bear the cost for the delay.

Learned counsel for the respondents-defendants, on the other hand, submits that once the trial court has come to the conclusion that the evidence needed to be brought on record can be done at the time of the rebuttal evidence, the order dated 09.01.2023 passed by the trial court needs to be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The prayer of the petitioner-plaintiff was to recall DW5-Kusum so as to put only one question with regard to the existence of 2nd register as found by the police authorities during investigation of the criminal case on the same aspect of the forged agreement to sell. Once, the trial court has recorded a finding that fact need to be brought on record and the said evidence can be brought during the rebuttal evidence, said finding show that evidence sought to be brought on record is material for the decision of the

question pending consideration in the suit. The procedure, which has been framed by the Civil Procedure Code, is for the early conclusion of the trial and not for complicating the same.

Once, the fact/evidence needs to be brought on record is already before a criminal court, bringing the said evidence before the civil court should have been appreciated in a correct perspective. Hence, the impugned order dated 19.01.2023 (Annexure P-1) is set-aside with a direction to the trial court to summon DW5-Kusum on a particular date, on which date she can be further cross-examined qua a particular fact as stated by the petitioner-plaintiff in his application. It is made clear that in case, DW5-Kusum appears on the date summoned, the petitioner-plaintiff will be at liberty to cross-examine the said witness but no further opportunity will be given on the said aspect. In case, the petitioner-plaintiff fails to utilise the opportunity granted by this court on the date the witness appears, no further opportunity will be granted under any circumstances.

The grant of the present opportunity is also subject to the payment of cost of ₹10,000/- to be paid to be respondent-defendants on the next date of hearing, after which only, the trial court will summon DW5-Kusum.

The present civil revision petition is allowed in above terms.

February 16, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes