

CR-1600 of 2019

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

CR-1600 of 2019

Reserved on: 14.09.2023

Pronounced on: 27.09.2023

Ved Parkash

.....Petitioner

Versus

M/s Niskomal Estate (P) Ltd. and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. Prateek Rathee, Advocate,  
for the petitioner.

Ms. Pooja Chhabra, Advocate,  
for Mr. Rahul Deswal, Advocate,  
for respondent No.2.

Mr. Ombar Chauhan, Advocate,  
for respondents No.6 and 7.

**NAMIT KUMAR, J.**

1. This revision petition has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 18.07.2018 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Sonipat, whereby application filed by the petitioner to produce on record the statement of account by way of additional evidence, has been dismissed.

2. Brief facts relevant for disposal of the present revision petition are that petitioner filed a suit for possession by way of specific performance of the contract of agreement to sell dated 27.03.2008 with consequential relief of permanent injunction. During the pendency of the suit, petitioner moved an application under Section 151 CPC for production of statement of account in respect of cheque No.864173

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dated 20.04.2011 amounting to Rs.15 lacs by way of additional evidence, which has been dismissed vide impugned order by the Court of learned Additional Civil Judge (Senior Division), Sonipat.

3. Learned counsel or the petitioner contended that factum of statement of account was though pleaded in the plaint but the same could not be established in evidence despite due diligence. He further contended that plaintiffs closed their evidence of their own. He further contended that a party should not be made to suffer for an error on the part of its counsel. He further contended that if something remains obscure can be filled in by way of additional evidence. In support of his contentions, learned counsel for the petitioner relied upon the judgment of this Court in ***Hazara Singh v. Bachan Singh, 1998(2) R.C.R.(Civil) 357.***

4. *Per contra*, learned counsel for the respondents contended that application of the petitioner-plaintiffs has rightly been dismissed by the trial Court. It was further contended that plaintiffs availed about 11 opportunities to lead their evidence and they themselves closed their evidence. It was further contended that despite availing numerous opportunities, plaintiffs did not show due diligence to produce the evidence now sought to be produced by way of additional evidence. It was further contended that the application was filed only to delay the proceedings.

5. I have heard learned counsel for the parties and perused the record.

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6. Perusal of the record shows that factum of statement of account was pleaded in the plaint, however, due to fault on the part of the counsel plaintiff, could not establish the same in evidence. It may be noted here that in *Salem Advocate Bar Association, Tamil Nadu vs. Union of India AIR 2005 Supreme Court 3353*, it has been held by the Hon'ble Supreme Court that notwithstanding the deletion of Order 18 Rule 17-A of CPC, 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. In the present case, this Court is of the considered opinion that ends of justice would be met if one effective opportunity is granted to the petitioner to produce and prove the said document by way of additional evidence, subject to costs of Rs.5,000/- to be paid to the respondents. However, the respondent shall also be given an effective opportunity to rebut the evidence produced by the petitioner by way of additional evidence, if so required.

6. For the reasons stated above, the impugned order dated 18.07.2018 is set aside. The revision petition is allowed in the aforementioned terms. Interim order dated 07.03.2019 stands vacated.

27.09.2023  
R.S.

**(NAMIT KUMAR)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No